



**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. 09-06989

**Appearances**

For Government: Jeff A. Nagel, Department Counsel  
For Applicant: Krystal M. Limon, Attorney At Law

May 19, 2011

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) dated August 25, 2006. (Government Exhibit 1.) On October 28, 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 on November 16, 2010, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to this Administrative Judge on December 14, 2010. A notice of hearing was issued on January 3, 2011, scheduling the hearing for January 20, 2011. The Government presented twelve exhibits, referred to Government Exhibits 1 to 12, which were admitted without objection. The Applicant called one witness and presented twenty-five exhibits,

referred to as Applicant's Exhibits A through Y, which were admitted without objection. The Applicant also testified on his own behalf. The record remained open until January 25, 2011, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted one Post-Hearing Exhibit, consisting of one page, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. The official transcript (Tr.) was received on January 28, 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 following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 47 years old, and divorced. He is employed by a defense contractor as a Command Post Systems Advisor 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 denies each of the delinquent debts set forth in the SOR under this guideline and asserts that he has hired a credit repair company to assist him in resolving the debts. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated May 15, 2009; September 26, 2006; July 15, 2004; July 26, 2010; and December 7, 2010; collectively reflect each of the delinquent debts set forth in the SOR. (Government Exhibits 7, 8, 9, 10, 11 and 12.)

The Applicant served honorably in the United States Marine Corps from 1983, for thirteen months as a reservist, and then on active duty, until 2004, when he retired as a Staff Sergeant E-6. (Applicant's Exhibit O). He was deployed at least seven times during his military career, including the Gulf War in 1990, and the invasion of Iraq in 2003. (Tr. p. 40.) He has held a security clearance for twenty-six years. He married in 1985.

The Applicant's delinquent debts listed in the SOR occurred over a period of twenty-four years, during his marriage with his ex-spouse. (Tr. p. 47.) During his military deployments, his wife was responsible for paying the bills and handling the household finances. Rather than addressing the financial obligations, she failed to pay the bills. Upon Applicant's return from his last deployment, Applicant became aware of

the substantial financial crisis his wife was responsible for. He subsequently divorced his wife in December 2009. (Applicant's Exhibit C.) However, throughout the separation and prior to the finalization of divorce, Applicant's wife used his personal information to run up substantial debt, and then refused to pay it. The Applicant first learned of the true extent of his indebtedness during his security clearance investigation. The Applicant has assumed responsibility for all of the debts incurred during the marriage. These debts are the debts listed in the SOR.

To resolve his debts, in February 2010, the Applicant contacted a Debt Assistance Program and hired a credit counselor to assist him in cleaning up his credit. (Applicant's Exhibit A.) They are currently working to resolve his delinquent debt, one by one. The Applicant is making payments to the credit counselor who is in turn paying the Applicant's debts. (Applicant's Exhibit B.) The Applicant provided a copy of his credit repair contract, which supports his testimony that he has hired the company and they are contacting his creditors and settling or resolving his debts. (Applicant's Exhibits A, B and Tr. p. 51.)

Many of the delinquent debts incurred during his marriage have now been resolved and removed from the Applicant's credit reports. Others are still in the process of being addressed. The Applicant plans to continue working with the credit repair counselor to resolve each of the delinquent debts listed in the SOR. 1(a)., a debt to a creditor for a medical account in the amount of \$1,702.00 remains outstanding. 1(b)., a debt to a creditor in the amount of \$6,421.00 has been paid. (Tr. p. 53 and Applicant's Exhibits W and X.) 1(c)., a debt to a creditor in the amount of \$4,894.00 has been deleted from the Applicant's credit reports. (Tr. p. 54 and Applicant's Exhibits S and Q.) 1(d)., a debt to a creditor in the amount of \$150.00 has been deleted from the Applicant's credit reports. (Tr. p. 55 and Applicant's Exhibit Q.) 1(e)., a debt to a creditor in the amount of \$6,369.00 remains outstanding. (Tr. p. 56-58.) 1(f)., a debt to a creditor in the amount of \$652.00 remains outstanding. (Tr. p.60.) 1(g)., a debt to a creditor in the amount of \$2,827.00 remains outstanding. (Tr. p. 61 and Applicant's Exhibit Y.) 1(h)., a debt to a creditor in the amount of \$1,261.00 has been removed from the Applicant's credit reports. (Tr. pp. 61-62 and Applicant's Exhibit Y.) 1(i)., a debt to a creditor in the amount of \$1,261.00 has been deleted from the Applicant's credit reports. (Tr. p. 62 and Applicant's Exhibit Q.) 1(j)., a debt to a creditor in the amount of \$3,337.00 has been paid. (Tr. pp. 62-63 and Applicant's Exhibits V and X.) 1(k)., a debt to a creditor in the amount of \$2,597.00 remains outstanding. (Tr. p. 64.) 1(l)., a debt to a creditor in the amount of \$2,165.00 has been paid. (Tr. p. 64-65 and Applicant's Exhibit X.) 1(m)., a debt to a creditor in the amount of \$2,148.00 has been paid. (Tr. pp. 42-45.) 1(n)., a debt to a creditor in the amount of \$352.00 has been deleted from the Applicant's credit reports. (Tr. p. 55 and Applicant's Exhibit Q.) 1(o)., a debt to a creditor in the amount of \$96.00 has been deleted from the Applicant's credit reports. (Tr. p. 55 and Applicant's Exhibit Q.) 1(p)., a debt to a creditor in the amount of \$1,374.00 has been paid. (Tr. p. 65 and Applicant's Exhibits R and Q.) 1(q)., a debt to a creditor in the amount of \$1,091.00 remains outstanding. 1(r)., a debt to a creditor in the amount of \$59.00 and, 1(s)., a debt to a creditor in the amount of \$490.00 remain outstanding. (Applicant's Exhibit U.)

1(t)., the Applicant's wages were garnished for unpaid state taxes for 1998, 1999, 2000, 2001, 2005, 2006 and 2007 in the approximate amount of \$16,103.00. (Government Exhibit 3.) The Applicant believes the debt has now been paid in full. (Tr. p. 68.)

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance because he engaged in conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations that raises questions about his reliability, trustworthiness and ability to protect classified information.

The Applicant denied the allegations set forth under this guideline and indicated that most if not all of the allegations in fact occurred, but that he was not cited, charged, or convicted for every violation.

During the period from 1982 until October 2005, the Applicant was cited, and or charged with numerous criminal or vehicular violations. In October 1982, he was charged with Criminal Trespassing, found guilty and fined \$122.00. In November 1982, he was charged with Assault 3<sup>rd</sup> degree, found guilty and fined. (Government Exhibit 6.) In July 1999, he was charged with Assault/Child Abuse following a domestic dispute. (Government Exhibits 4 and 6.) In August 2000, he was cited for Communicating a Threat while serving in the United States military.

In May 1991, the Applicant was cited with a Stop Sign violation, No Driver's License, and No Proof of Financial Responsibility for Unpaid Taxes. In August 2001, he failed to appear in court for these charges, and his fines were referred to collection. In December 2002, he was a party to a Domestic Disturbance while serving in the United States military. In February 2004, he was cited for being Drunk and Disorderly while serving in the United States military. In October 2004, he was cited for Speeding. In December 2004, he failed to appear in court on the charge and his fine was referred to collection.

In March 2005, the Applicant was cited for Improper Use of Lanes. In July 2005, he failed to appear in court and his fined was referred to collection. In July 2005, he was charged with Inflicting Corporal Injury to his Spouse or Cohabitant. (Government Exhibit 6.) His spouse filed a restraining order but did not press charges. In October 2005, he was cited for a Faulty Tail Light, No Driver's Licence, No Proof of Financial Responsibility for Unpaid Taxes. In January 2006, he failed to appear in court and the case was referred to Superior Court.

Since 2005, the Applicant has lived a straight and narrow life. He has resolved all of his criminal matters and vehicular violations. He has not engaged in any questionable behavior or poor personal conduct. He asserts that he has changed his behavior of the past and is now much more responsible.

The Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) dated August 25, 2006. Question 27(c) of the application asked the Applicant if in the last seven years, he had a lien placed against his property for failing to pay taxes or other debts? The Applicant answered, "NO." (Government Exhibit 1.) He failed to disclose his tax liens against him for unpaid taxes in June 2001 and July 2003 in the amounts of \$1,021.00 and \$1,943.00.

Question 28(a) of the application asked the Applicant if in the last seven years, had he been over 180 days delinquent on any debts. The Applicant listed one account and indicated that the account was satisfied in September 2005. (Government Exhibit 1.) He failed to disclose that the account was never satisfied and remains unpaid.

Question 28(b) of the application asked the Applicant whether he was currently over 90 days delinquent on any debts. The Applicant answered, "NO." (Government Exhibit 1.) The Applicant failed to list the debts set forth in the SOR under subparagraphs 1(b) through 1(i), and 1(k) through 1(t).

The Applicant completed a security clearance application dated May 13, 2004. Question 24 of the application asked the Applicant if he had ever been charged with or convicted of any offenses related to alcohol or drugs. The Applicant answered, "NO." (Government Exhibit 2.) He failed to disclose that he was charged with being Drunk and Disorderly in about February 2004 while serving in the military.

Question 26 of the same application asked, in the last seven years, had he been subject to court-martial or other disciplinary proceedings under the Uniform Code of Military Justice. The Applicant answered, "NO." (Government Exhibit 2.) He failed to disclose that he was charged with Assault/Child Abuse in January 1999.

Question 26 of the same application asked the Applicant if in the last seven years had he been arrested for, charged with, or convicted of any offenses not listed in modules 21, 22, 23, 24, or 25. The Applicant answered, "NO." (Government Exhibit 2.) He failed to disclose that he was charged with Communicating a Threat in about August 2000, while serving in the military.

Question 36 of the same application asked the Applicant 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 2.) The Applicant failed to disclose that the state entered tax liens against him for unpaid taxes in June 2001 and July 2003 in the amounts of \$1,021.00 and \$1,943.00.

The Applicant credibly testified that he was unaware of his exact financial status at the time of filing out the security clearance application. Thus, he did not know about the liens for unpaid taxes, nor was he aware of the extent of his delinquent debts. In regard to his criminal matters, most of which occurred while he was in the military, he does not believe he was cited, charged or convicted for any of the misconduct, and thought he was answering the questions truthfully. He admits that he was rushing

through the application and did not give it the proper attention when he was filling it out. However, he did not intentionally conceal or fail to disclose material information from the Government on the application. (Tr. pp. 91-100.)

Applicant's witness, the Information Management Officer at the company, who met the Applicant in 2004/2005, and who has worked with him, has no reservations whatsoever about his work performance, trustworthiness or reliability. The Applicant is recommended for a position of trust. (Tr. p. 29-34.)

Performance evaluations of the Applicant for the periods from April 1, 2007, to March 31, 2008; March 1, 2008, to March 31, 2009; and April 1, 2009, to March 31, 2010 reflect ratings of either "outstanding", "excellent" and "satisfactory". (Applicant's Exhibits D, E and F.)

Letters of recommendation from professional associates of the Applicant, including a Marine Colonel, a company Task Manager, and a Marine Battalion Operations Chief, who have all worked with the Applicant and have known him for many years, attest to his reliability and trustworthiness, integrity and professionalism. (Applicant's Exhibits I, J and K.)

Letters of recommendation from his Facility Security Officer, his Direct Supervisor for the past five years, and a past coworker and long time friend, attest to the Applicant's honesty and forthright character, professionalism, reliability and trustworthiness, strong willingness and commitment to be the best, and dedication to the job. He is recommended for a position of trust. (Applicant's Exhibits L, M, N and P.)

The Applicant received a Certificate of Commendation from the United States Marine Corps dated February 1, 2009. (Applicant's Exhibit H.)

## **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.

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:

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, dishonesty and/or poor 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). 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, the Applicant's indebtedness occurred as a direct result of his ex-wife, who failed to pay the bills during his military career. Since learning of his financial mess, he divorced his wife and hired a credit counseling company who is and has been working to resolve the debts. Many of the debts have been deleted from the Applicant's credit reports and others are in the process of being addressed. By following this program, the Applicant expects to be debt free soon. He has shown good judgment and responsibility.

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*, 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).

Under Guideline E, the Applicant's past criminal behavior is inexcusable. However, for the past six years, since 2005, he has had a clean record and has not engaged in poor behavior. He has obviously matured and become more responsible.

In regard to the Government's allegations that he deliberately falsified his security clearance applications in response to questions concerning his financial indebtedness and criminal past, I find that he did not. Under the circumstances, the Applicant was not aware of the extent of his financial indebtedness until his security clearance investigation. He also claims that he was not cited, charged or convicted in many of the criminal instances, and there is no evidence in the record to prove otherwise. He was indeed careless, but not deceitful, and did not take the time to reflect on the answers to the questions at issue. He now realizes their importance and will be much more careful when filling out the application in the future. Accordingly, I find for 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. 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.
- 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.
- Subpara. 1.t.: 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.
- Subpara. 2.g.: For the Applicant.
- Subpara. 2.h.: For the Applicant.
- Subpara. 2.i.: For the Applicant.
- Subpara. 2.j.: For the Applicant.
- Subpara. 2.k.: For the Applicant.
- Subpara. 2.l.: For the Applicant.

Subpara. 2.m.: For the Applicant.  
Subpara. 2.n.: For the Applicant.  
Subpara. 2.o.: For the Applicant.  
Subpara. 2.p.: For the Applicant.  
Subpara. 2.q.: For the Applicant.  
Subpara. 2.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