



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 10-00099  
 )  
 )  
Applicant for Security Clearance )

**Appearances**

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

September 29, 2011

\_\_\_\_\_  
**Decision**  
\_\_\_\_\_

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 26, 2009. (Government Exhibit 1.) On March 9, 2011, 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 March 30, 2011, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 21, 2011. A notice of hearing was issued on June 6, 2011, and the hearing was scheduled for June 22, 2011. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6 that were admitted without objection. The Applicant called one witness and presented six exhibits, referred to as Applicant's Exhibits A through F that were admitted without objection. He also testified on his own behalf. The Applicant requested that the record remain open to submit additional documentation. The record remained open until close

of business on July 8, 2011. The Applicant submitted thirteen Post-Hearing Exhibit consisting of thirty-four pages, referred to as Applicant's Post-Hearing Exhibits A through M. The official transcript (Tr.) was received on July 1, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **FINDINGS OF FACT**

The Applicant is 44 years old and has a bachelor's degree in Management of Technical Operations. He is employed as a Flight Test Engineer with a defense contractor 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). 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 admits that he was indebted to the respective lenders for two delinquent loans on real property that are set forth in the SOR. Credit Reports of the Applicant dated December 29, 2005; June 16, 2009; and February 16, 2011, collectively reflect that the Applicant was indebted to these creditors. (Government Exhibits 4, 5 and 6.)

The Applicant served in the United States Air Force for twenty years, from November 1985 to December 2005, and retired as an E-7, Master Sergeant. During his military career, he received the Good Conduct Medal and other commendations and awards. (Applicant's Exhibit A.) He has held a security clearance for twenty-six years and has incurred no security violations.

In 2005, the Applicant and his family were living in State A, where they purchased a primary residence with plans to retire there. (Applicant's Post-Hearing Exhibits A and B.) He was eligible to retire from the Air Force in December 2005, and with he and his wife's anticipated employment opportunities, they believed that they easily could afford to make some property investments. Several months earlier in 2005, he decided to purchase a house, under his name, as an investment for his eighteen year old son. (Applicant's Post-Hearing Exhibits C and D.) The plan was for his son and his fiancée to assist in making the payments and live in the house. It was about this time that the Applicant was made aware of a great job opportunity for him in State B that he could take after he retired from the military. In August 2005, he decided that he could rent out his two houses in State A and move to State B to take the job. He also purchased a house in State B to live in. In November 2005, while on terminal leave

from the military, he was hired by his current employer. In December 2005, he retired from the military. He immediately rented out his house in State A to a military friend. His friend lived there until he received orders to move. In 2008, the Applicant's son lost his job and could no longer assist with the payments on the second house in State A. The Applicant was unable to find tenants to pay enough rent to cover the mortgage.

He and his wife did their best to maintain the payments on all three properties as long as they could. They refinanced the loans on the properties which lowered the payments for a while. They tried to sell the houses, but had no offers. Eventually, they put one of the houses in State A up for short sale. It sold in 2009. The Applicant's second house in State A went into foreclosure. The Applicant hired a law firm to negotiate any debt he may have as a result of the foreclosure. (Applicant's Exhibit E.)

As a result of the house that was foreclosed upon in State A, the Applicant became indebted to a mortgage lender for an equity line of credit account that is 120 days or more past due in the amount of \$16,000.00. He has retained the services of a professional to help negotiate a debt settlement of the full amount of the indebtedness. (See Applicant's Answer to SOR, and Applicant's Post-Hearing Exhibit L.) He also became indebted to a mortgage lender on an account that was past due in the amount of \$16,580.00. This account is in foreclosure status with a total loan balance of \$254,954.00. The Applicant submits that the total loan balance was reported to the Internal Revenue service during the 2009 tax year via 1099-A (Acquisition or Abandonment of Secured Property), in the amount of \$254,954.96. (See Applicant's Exhibit F.) As a result of this report, the Applicant contends that he has been relieved of this debt. There is no evidence in the record to the contrary.

From May 2006 to April 2007, his wife was working and earning \$3,000 monthly. She then quit her job due to stress related health issues. During this period the Applicant never fell behind on any of his other debts. His credit cards are and have been current, and his regular monthly expenses are paid in a timely basis. He has no other delinquent debts.

Although the SOR does not include this allegation, the Applicant has notified the Government that in regard to his current primary residence now in State B, he had previously refinanced the house in an effort to be able to make the payments on all three houses. His intention was to refinance the loan again, and return to a fixed rate loan when his wife was capable of working. She has been unable to locate suitable employment and now the loan payments are unsustainable. The payments have increased from \$2,300 monthly to \$4,800.00 monthly. (Applicant's Post-Hearing Exhibits H, I, J and K.) The three year pay option ARM he obtained in 2007-2008 has recently been reset. The Applicant's attorney is currently working toward a loan modification with the lender to reduce the payments to the original payment of \$3,500 monthly, which the Applicant can easily afford. If the Applicant is unable to refinance his current house, he plans to try to get renters, sell the home, or do a short sale.

The Applicant testified that he realizes he did not do enough research on the real estate market before he purchased these homes. He does not anticipate problems of this sort ever occurring again.

A former retired United States Air Force Chief Master Sergeant, E-9, who has known the Applicant since 1997, and who currently hired the Applicant based upon his impressive qualifications, testified that the Applicant is one of his best employees. The Applicant is considered "second to none in his book". He is trustworthy, reliable, intelligent and capable. He would trust the Applicant with his life. (Tr. pp. 24-26.)

Letters of recommendation from his family, friends, professional associates, and coworkers attest to the Applicant's leadership qualities, excellent work ethic, loyalty and commitment to his country, high level of integrity, as well as his calm and professional demeanor while working in a highly stressful program. He is highly recommended for a position of trust. (Applicant's Post-Hearing Exhibit M.)

Applicant's performance assessment and development review for the period from January 1, 2006, through December 31, 2006, indicates an overall assessment that he is a "high contributor." (Applicant's Exhibit B.)

The Applicant has received a number of "spot awards" from his current employer in recognition of his contributions to the defense programs. (Applicant's Exhibit C.)

## **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 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 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, the collapse in the housing market, coupled with the Applicant’s poorly timed real estate investment decisions, caused his financial indebtedness. The problems that surfaced were completely unforeseeable and isolated. First and foremost, the Applicant has learned that he will never engage in a real estate investment again without doing the proper research. Throughout this period of financial hardship, he was and continues to be extremely diligent in doing his part to prevent foreclosure. When he took the job in State B and could no longer afford the mortgages on the houses in State A, he modified the loans on the houses in order to afford the payments. When he could no longer make those payments, he tried to sell the houses. When that was not successful, he put one of the houses up for short sale. Unfortunately one of his properties was

foreclosed upon. However, the Applicant acted responsibly and with integrity under the circumstances. In regard to the foreclosed property, the Applicant did everything he possibly could to avoid foreclosure on the property. He tried to short sale the property but the bank did not want to negotiate. He hired an attorney to assist him in negotiating any deficiency he may have on the foreclosed property. He did the best he could under the circumstances, and as much as humanly possible to resolve his financial problems. In regard to his current home, he has informed the government of his situation and is working toward refinancing the loan in order to afford the payments.

Under the particular circumstance of this case, the Applicant has made a good faith effort to resolve his past due indebtedness. He has a stellar record demonstrating that he has always paid his bills on time. But for his short sale and foreclosure, his record is unblemished. He understands the importance of paying his bills on time and living within his means. He also knows that he must 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 fiscally 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 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. 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 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 testimony, recommendations, and dedicated 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.

## **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