



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



In the matter of: )  
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----- ) ISCR Case No. 10-03243  
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Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Department Counsel  
For Applicant: *Pro se*

May 19, 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 January 7, 2010. (Government Exhibit 1.) On November 4, 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 December 22, 2010, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on February 7, 2011. A notice of hearing was issued on February 11, 2011, and the hearing was scheduled for March 3, 2011. At the hearing the Government presented eight exhibits, referred to as Government Exhibits 1 through 8 that were admitted without objection. The Applicant called one witness and presented nine exhibits, referred to as Applicant's Exhibits A through I 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 March 8, 2011. The Applicant submitted three pages, consisting of two Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A and B. The official transcript (Tr.) was received on March 14, 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 31 years old and married with one child. He is employed with a defense contractor as a Aircraft Structural Mechanic 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 denies the three debts set forth in the SOR. Credit Reports of the Applicant dated January 26, 2010; May 13, 2010; August 3, 2010; and February 4, 2011; reflect that at one point the Applicant was indebted to each of the creditors set forth in the SOR. (Government Exhibits 2, 5, 6 and 7.)

The Applicant served honorably on active duty in the United States Navy from December 1998 to December 2001. (Applicant's Exhibit I and Government Exhibit 1.)

The Applicant got married in 2006, purchased a new house that was being built, and moved into it in April 2007. At that time, he was earning about \$50,000 annually and his wife, a school teacher was earning about \$40,000 annually. The first mortgage was approximately \$320,000; with monthly payments of about \$1,800.00. The home equity line of credit was approximately \$80,000; with monthly payments of about \$700.00. The Home Owners Association monthly payment was about \$198.25. The total combined monthly payment was about \$2,700.00. The house was affordable and they could comfortably make the payments. In June 2008, his wife had a baby and she decided to stay home with her child, instead of go to work, to avoid the cost of child care. With the reduced household income, the Applicant started having problems making the mortgage payments on the house. He contacted the bank and informed them of their financial hardship. (Applicant's Exhibit B.) He then applied for a loan modification. The bank approved a modification for only the second loan on the house. (Applicant's Exhibit F.) This reduced the amount of their mortgage slightly. In July 2007, the Applicant purchased a reliable vehicle for his wife. In November 2008, the

Applicant quit his job, with the intent of finding a better one, but was unable to find employment. Unable to continue making the car payments, he negotiated with the finance company and was allowed to return the vehicle without any deficiency. (Tr. p. 27 and Applicant's Exhibit C.) His wife started tutoring on the side to bring in some money.

For three months, neither the Applicant or his wife were gainfully employed. During this period, they lived off of their credit cards, and could not afford to pay the mortgage on their home. At one point, the Applicant was delinquent on his house payment in the amount of \$54,940.00. He was also indebted to the Homeowners Association (HOA) for delinquent HOA fees in the amount of \$5,000. Although the Applicant and his wife eventually found employment, he realized that he could no longer afford the house and decided it best to put the house up for short sale. In March 2009, they hired a realtor and worked to get the house sold. (Applicant's Exhibit A.) Although there were several offers on the property, none of them were approved by the bank, and the property was ultimately foreclosed upon. (Applicant's Exhibit E.)

The Applicant received a 1099A and 1099C that indicate that the mortgage loan in the amount of \$78,875.00 was cancelled. (Applicant's Exhibit G.) The Applicant contacted the lender and was told that the HOA fees were supposed to be assumed by the buyer of the house and the lien was charged off by the bank. (Applicant's Post-Hearing Exhibit B.) In October 2010, the Applicant and his wife moved into an apartment where they now live and are paying off their credit card debt.

In April 2009, the Applicant went back to school to finish his mechanic qualifications for the job he now has with the defense contractor. In August 2009, he started working for a defense contractor. The Applicant's wife, who handles the household finances, has closed all of the credit cards to avoid extra finance fees and/or late charges, and is making regular monthly payments to the creditors to resolve the delinquent debt. (Tr. p. 29.)

Applicant's financial statement dated March 6, 2011, indicates that after paying his regular monthly expenses, he has \$400.00 left over at the end of the month. (Applicant's Post-Hearing Exhibit A.) The Applicant understands that he must always live within his means and be fiscally responsible.

Applicant's wife, who handles the finances in the family, testified that she and her husband are working on improving their financial situation. They know that they must be financially responsible and they are trying to get out of the hole they fell into. (Tr. p. 30.)

Applicant's performance evaluation dated April 19, 2010, reflect ratings of "exceeds" and "meets" performance requirements. (Applicant's Exhibit H.)

Excerpts from the Applicant's military records that include evaluations and letters of commendation are all favorable. (Applicant's 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 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 the Applicant's financial difficulties were partially caused by circumstances beyond his control, namely, his difficulties in finding suitable employment after quitting his job, and partially by making poor financial decisions. The Applicant realizes that he made a very foolish mistake by quitting his job when he did not have another one. As a result, he lost his house and accumulated excessive credit card debt. He has learned a harsh lesson from this experience. Since gaining employment, he has acted responsibly and with integrity under the circumstances. When he could no longer afford his home, he contacted the mortgage company and modified the loan. Realizing that he still could not afford the house, he placed it for short sale. He tried to sell the property to prevent the foreclosure, but was unsuccessful.

According to the law of the state in which the Applicant's property was located, and under the particular circumstances here, he no longer has any liability or any deficiency or action by the holder of the first or second mortgage. He did the best he could under the circumstances, and no longer owns real property. In addition, he has closed his credit card accounts and is making payments on a monthly basis to resolve them. He is current with all of his other financial obligations, and is not incurring any new debt. 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. Before he quit his job, he had a stellar financial record demonstrating that he has always paid his bills on time. 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 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. 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 performance evaluations and military records. 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.

### **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

