



**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. 10-06205

**Appearances**

For Government: Caroline A. Jeffreys, Department Counsel

For Applicant: *Pro se*

April 5, 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 November 23, 2009. (Government Exhibit 4.) On September 27, 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 in writing on December 9, 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 January 28, 2011. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on February 7, 2011, and he failed to submit a response to DOHA. The case was assigned to the Administrative Judge for resolution on March 24, 2011. Based upon a review of the case file, pleadings and exhibits, eligibility for access to classified information is denied.

## FINDINGS OF FACT

The Applicant is 53 years old. He has an Associates Degree and is employed by a defense contractor as a Technical Specialist RFF. He 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 seven of the delinquent debts set forth in the SOR, specifically, allegations 1(c), 1(d), 1(e), 1(f), 1(g), 1(h) and 1(j). He denies four of the delinquent debts set forth in allegations 1(a), 1(b), 1(i) and 1(k) and claims that these have been settled or paid or he has started making payments toward the debt. (See, Applicant's Answer to SOR.) There is no documentary evidence to support this claim. Credit Reports of the Applicant indicate that he is indebted to each of the outstanding creditors listed in the SOR, which total over \$54,727.00. (Government Exhibits 7 and 8.) Since November 2009, the Applicant has been working for his current employer.

He claims that his delinquent debts were the result of a nine month period of unemployment in 2006, chronic underemployment, and then a two month period of unemployment in 2009. His house was foreclosed upon in 2006. Applicant states that the amount owed on the loan at the time of the foreclosure was \$88,000. The house was sold on the open market for \$138,000. He states that there was a \$50,000 profit on the sale, enough profit from the sale of his house to cover both the first and second mortgages. (Applicant's Answer to SOR.) The Applicant claims that he also had to incur the expenses of moving out of state to eventually find employment while trying to keep two houses afloat. (Applicant's Answer to SOR and Government Exhibit 6.) The Applicant failed to submit any documentary evidence in support of these contentions. He states that he will take care of his delinquent debts as best he can within his budget. There is no evidence that he has initiated a payment plan or begun payments toward any of his delinquent debts. His financial statement dated August 14, 2010, reflects his monthly gross income of \$3,560.00 a month with monthly expenses of \$2,576.00 without payments toward any of his delinquent debts. (Government Exhibit 5.)

The following delinquent debts remain outstanding; A delinquent debt owed to a creditor in the amount of \$733.00 remains owing. (Government Exhibit 7.) A delinquent debt owed to a creditor in the amount of \$150.00 remains owing. (Government Exhibits 5, 6 and 7.) A delinquent debt owed to a creditor in the amount of \$743.00 remains owing. (Government Exhibits 5, 6 and 7.) A delinquent debt owed to a creditor in the amount of \$1,056.00 remains owing. (Government Exhibits 5, 6 and 7.) A delinquent debt owed to a creditor in the amount of \$10,512.00 remains owing. (Government

Exhibits 5, 6 and 7.) A delinquent debt owed to a creditor in the amount of \$7,373.00 remains owing. (Government Exhibits 5, 6 and 7.) A delinquent debt owed to a creditor in the amount of \$3,078.00 remains owing. (Government Exhibit 7.) A delinquent debt owed to a creditor in the amount of \$7,845.00 remains owing. (Applicant's Answer to SOR.) A delinquent debt owed to a creditor in the amount of \$19,848.00 remains owing. (Government Exhibits 5, 6, 7 and 8.) A delinquent debt owed to a creditor in the amount of \$3,307.00 remains owing. (Government Exhibits 5, 6 and 8.) A delinquent debt owed to a creditor in the amount of \$82.00 remains owing. (Applicant's Exhibits 5, 6 and 8.)

## **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;

19.(c) a history of not meeting financial obligation.

#### 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 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 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 problems may have started as a result of unemployment and underemployment. However, since November 2009, for more than a year, he has been working for his current employer. Since then, he has not shown that he has taken timely and reasonable steps to address his indebtedness. His delinquent debts are recent and continuing, numerous and significant, and there is no evidence of financial counseling or a good faith effort to resolve them. In fact, there is no evidence in the record in mitigation. The Applicant failed to respond to the FORM or submit any documentary evidence in support of his contentions.

Considering all of the evidence, the Applicant has not 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. None of the mitigating conditions are applicable.

The Applicant has not demonstrated sufficient good judgment or a good faith effort to resolve his indebtedness, nor is there sufficient evidence of financial rehabilitation. For the most part, the Applicant has ignored his debts and has not demonstrated that he can properly handle his financial affairs. 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 judgment, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

I have considered all of the evidence presented, however, it does not come close to mitigating the negative effects of his financial indebtedness and its impact on his ability to 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 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:	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.

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge