



**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. 10-08743

**Appearances**

For Government: Jeff 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 dated April 21, 2010. (Government Exhibit 1.) On April 15, 2011, 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 access to classified information for the Applicant and recommended referral to an Administrative Judge to determine Applicant's eligibility for a security clearance.

The Applicant responded to the SOR on May 5, 2011, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to this Administrative Judge on July 5, 2011. A notice of hearing was issued on July 6, 2011, scheduling the hearing for August 16, 2011. The Government presented four exhibits, referred to Government Exhibits 1 through 4, which were admitted without objection. The Applicant presented seventeen documentary exhibits, referred to as Applicant's

Exhibits A through Q, which were admitted without objection. The Applicant also testified on his own behalf. The record remained open until close of business on September 19, 2011, to allow the Applicant the opportunity to submit documentary evidence. The Applicant submitted eight documentary exhibits referred to as Applicant's Post-Hearing Exhibits A through H, which were admitted without objection. The official transcript (Tr.) was received on August 23, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for a security clearance 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 31 years and has a high school diploma and one and a half years of college. He is employed by a defense contractor as a Material Coordinator 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 clearance because he is financially overextended and at risk of having to engage in illegal acts to generate funds.

The Applicant admits each of the delinquent debts set forth in the SOR under this guideline that total approximately \$20,000.00. (See, Applicant's Answer to SOR.) Credit Reports of the Applicant dated April 29, 2010; and August 10, 2011, collectively reflect that at one time each of the delinquent debts set forth in the SOR were owing. (Government Exhibits 2 and 4.)

Prior to 2007, the Applicant paid his bills on time and had perfect credit. In 2007, during the housing boom, the Applicant left his full-time job and started his own business doing home automation and custom home theater design. He obtained a business license and a fictitious business name. (Applicant's Post-Hearing Exhibit B and Tr. p. 74.) The Applicant purchased a company van, tools, uniforms, a desk, computers, and filing cabinets, and worked out of his home. (Tr. p. 83.) He had one partner that worked with him. By 2008, he was living on credit cards and unable to meet his financial obligations. The housing market declined and eventually collapsed, and the Applicant was left unemployed. His first priority was to pay his mortgage and when he was not able to pay that, he had to short sell his home. He moved in with his brother who supported him until he found a job. In 2009, he was offered his previous job back and has been employed there since.

During this failed business debacle, the Applicant also failed to file both his state and federal income tax returns for tax years 2007, 2008 and 2009. He explained that as a sole proprietor of the business he did not have the expertise to file his personal or business income returns himself. His financial paperwork was not properly organized. In retrospect, he realizes that his decision to start his own business was not a well thought out one, as he should have been much more prepared for the unexpected. In October 2010, he hired a bookkeeper to prepare his personal and business tax returns for him, and they have all now been filed, and he has no tax liability. (Applicant's Post Hearing Exhibit A and Applicant's Exhibits A, B, C, D, E and F.)

After regaining employment, the Applicant first contacted a debt management company to assist him in resolving his debt. After pursuing them for several weeks and they were non-responsive to his calls, he hired another company in March 2011 that he is currently working with. (Applicant's Exhibits J, K and L, Tr. p. 59.) For their services, he pays \$257.00 monthly and they estimate that based upon his debt, he will be debt free within 36 months. (Tr. p. 52.) They are in the process of contacting his creditors and negotiating the debt down with the intent of paying the larger debts first. (Tr. p. 68.)

All of the delinquent debt set forth in the SOR was incurred as a result of the failed business. Several debts have been paid, others are waiting to be paid according to his payment plan. 1(c). A debt owed to a creditor in the amount of \$264.00 has been paid. (Applicant's Exhibit N and Tr. p. 43.) 1(d). A debt owed to a creditor in the amount of \$636.00 remains owing. (Applicant's Answer to SOR.) 1(e). A debt owed to a creditor in the amount of \$100.00 has been paid. (Applicant's Exhibit P and Tr. p. 43.) 1(f). A debt owed to a creditor in the amount of \$1,789.00 remains owing. (Applicant's Answer to SOR.) 1(g). and 1(p)., These are one in the same debt owed to a creditor in the amount of \$81.00 that has been paid. (Applicant's Exhibit P and Tr. p. 43.) 1(h). A debt owed to a creditor in the amount of \$177.00 remains owing. (Applicant's Answer to SOR.) 1(i). A debt owed to a creditor in the amount of \$1,061.00 remains owing. (Applicant's Answer to SOR.) 1(j). A debt owed to a creditor in the amount of \$260.00 remains owing. (Applicant's Answer to SOR.) 1(k). The debt management company has negotiated a settlement of \$3,000 for a delinquent debt owed to a creditor in the amount of \$7,289.00. (Applicant's Exhibit O and Tr. p. 44.) 1(l). A debt owed to a creditor in the amount of \$581.00 remains owing. (Applicant's Answer to SOR.) 1(m). A debt owed to a creditor in the amount of \$3,977.00 remains owing. (Applicant's Answer to SOR.) 1(n). A debt owed to a creditor in the amount of \$6,360.00 remains owing. (Applicant's Answer to SOR.) 1(o). A debt owed to a creditor in the amount of \$919.00 remains owing. (Applicant's Answer to SOR.) 1(q). A debt owed to a creditor in the amount of \$141.00 remains owing. (Applicant's Answer to SOR.) 1(r). A debt owed to a creditor in the amount of \$999.00 remains owing. (Applicant's Answer to SOR.) 1(s). A debt owed to a creditor in the amount of \$3,978.00 remains owing. (Applicant's Answer to SOR.)

The Applicant thought about filing bankruptcy but was concerned about doing so as he was under the belief that it might jeopardize his security clearance eligibility. (Tr. p. 61.) He further explored the idea of filing bankruptcy and learned that he did not

have enough debt to file Chapter 7, and under Chapter 13, his payments to the trustee would be more than he could afford. (Applicant's Post-Hearing Exhibits E and F.) He has chosen to remain with the debt management company plan. He has been consistent in all of his payments and has not been late on any other of his financial obligations, nor does he see himself being late in the future. (Applicant's Post-Hearing Exhibit C.) He is also currently enrolled in a personal finance class at the local college to help improve his financial understanding. (Applicant's Post-Hearing Exhibit H.)

The Applicant testified that this situation has been a real "eye opener" for him and that he has learned a lesson from this experience that he does not have the requisite background and knowledge to start a business. He has no intention of ever starting a business again. (Tr. p. 76.)

Applicant's financial statement dated August 1, 2011 indicates that after his regular monthly expenses, including his monthly payment to his debt management company, he has \$269.20 left at the end of the month. (Applicant's Exhibit G.)

Letters of recommendation from his Readiness Manager, and a Fire Captain who worked with the Applicant and knows him well attest to his honesty and integrity. He is described as an individual whose versatility allows him to work a dual job description. His flexibility to work short notice alternate shifts is one of his most admiral traits. His extensive computer background and knowledge is an asset to the company. (Applicant's Exhibit I.)

## **POLICIES**

When evaluating an Applicant's eligibility for a security clearance, the Administrative Judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as "the whole-person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by Applicant or proven by Department Counsel . . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently failed to protect or safeguard classified information. Such, decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

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 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;
- 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 granted to only those defense contractor employees 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 eligibility for 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 and access to classified information.

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 excessive indebtedness was caused by his failed business venture in 2008. In retrospect, he realizes that he made a big mistake taking on much more responsibility than he was prepared for. As a result, he lived on credit cards and accumulated debt that he could not afford to pay. Since 2009, when he was rehired by his previous employer, he has filed his income tax returns in question and has been working to resolve his debts. He has hired a debt management company and is following their plan to have him debt free within three years. He plans to continue with the payment plan until he has resolved all of his debt. He is living frugally and not incurring any new debt. Under the circumstances, he has done everything humanly possible to show that he is responsible, trustworthy and reliable. At this point, he is working to rebuild his credit.

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*, 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. 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).

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.

Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his Financial Considerations and Personal Conduct. Accordingly, the evidence supports a finding for 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: 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.



## **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