



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-09192

Appearances

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

November 28, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 14, 2010. (Government Exhibit 1.) On May 23, 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 June 28, 2011, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 28, 2011. A notice of hearing was issued on September 22, 2011, and the hearing was scheduled for October 19, 2011. The hearing was convened that day and reconvened for a second day on October 24, 2011. At the hearing the Government presented eight exhibits, referred to as Government Exhibits 1 through 8, which were admitted without objection. The Applicant presented two exhibits, referred to as Applicant's Exhibits A and B, which were also admitted without objection. He also

testified on his own behalf. The record remained open until close of business on October 31, 2011, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted two Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A and B, which were admitted without objection. The official transcript (Tr.) was received on November 3, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 55 years old and is married a second time. He has a high school diploma, an Associates Degree from a junior college, and has completed 80 units from a state college. He is employed with a defense contractor as a Quality Assurance Engineer 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 admitted all of the allegations set forth in the SOR. Credit Reports of the Applicant dated July 27, 2004; May 21, 2010; January 29, 2011; July 20, 2011; and October 18, 2011, reflect that the Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling in excess of \$84,000. (Government Exhibits 4, 5, 6, 7, 8.) The Applicant claims that he has no recollection of a debt owed to a creditor in the amount of \$194.00 that was placed into collection.

The Applicant started working in the defense industry in 1979, and has worked there for the past thirty years. In 1978, he married his first wife, they had two daughters, and after twenty five years of marriage, they divorced in 1998. About this same time, he was laid off from his job he held for twenty years and was unable to pay his bills. In 1999, he was forced to file for Chapter 7 Bankruptcy to discharge his debts. The debts were discharged in November 1999. Prior to losing his job, his finances were in good condition. (Tr. p. 36.) Following the bankruptcy, the Applicant had no debt except his child support obligation. (Tr. p. 39.)

The Applicant currently earns \$90,000 annually. (Tr. p. 41.) In July 2005, he remarried and his current wife earned approximately \$60,00 to \$70,000 at her job. In 2005, the Applicant purchased a brand new home for \$510,000 and obtained an interest only loan. (Tr. P. 46.) He understood that the loan payments would increase over time but was not sure of the exact terms of the loan. He did not read all of the

documentation and found it overwhelming. In addition to his job with the defense contractor, the Applicant worked a side job as a musician and earned about \$20,000 annually. (Tr. p. 48.) He put \$35,000 to \$40,000 down on the house that he pulled from his 401(k). From 2004 to 2006, his payments on the house were \$1,700 monthly. He paid this comfortably for two years. (Tr. p. 51.) He knew the payment would increase but thought he could comfortably afford it. He planned to refinance the house after three years or so, and was assured that it would not be a problem. In 2007, the payments adjusted and the Applicant began to have financial problems. He also noticed that many of the homes in their neighborhood went into foreclosure. The Applicant continued to make the house payments as they increased to \$2,500 monthly. The house payments have now escalated to about \$5,700 monthly and are at a point where the Applicant can no longer afford to pay them. In January 2009, the Applicant stopped making the house payments and he and his wife continue to live in the house. The Applicant is now approximately \$85,000 behind on his mortgage payments with a total balance owed of \$796,000. (Tr. p. 71.)

In December 2008, the Applicant hired a lawyer to assist them with refinancing the house. This lawyer did nothing to help him and was eventually disbarred. (Tr. p. 94 and Applicant's Exhibit B.) He later hired another law firm to assist him in trying to stay in the house. He tried to obtain a loan modification and then a short sale. He was unsuccessful with both of these. The Applicant stopped paying the mortgage and the taxes, but continues to pay the utilities and the upkeep on the house, like the yard. (Tr. p. 65.)

The Applicant states that the house is now valued at about \$300,000. In order for him to buy it outright, he would have to pay between \$600,00 or \$700,00 for the house. He believes that he was ripped off when he bought it and if he knew what he knows now about the real estate market and the loan he got into, he would never have purchased the house. (Tr. p. 69.) His plans are to stay in the house to prevent it from being ripped apart and wait for the bank to direct them. (Tr. p. 107.) Although they have about \$2,000 in discretionary funds available at the end of the month, they have not started an escrow account. They do have an account that they have used to save money, which contains about \$60,000. (Tr. p. 114.)

The Applicant presented his performance appraisals for 2007, 2009 and 2010 that reflect the Applicant "meets requirements in every case." (Applicant's Post-Hearing Exhibit A.) Over the years the Applicant has received a number of awards from his employer for his dedication and contributions to the company. (Applicant's Exhibit A.)

Character reference letters submitted on behalf of the Applicant from his immediate supervisor, Managers, and other professional associates indicate that he is professional, reliable, trustworthy and hardworking. He has a strong technical background, and is well-liked, respected, and considered to be a man of integrity. He is said to have great communication skills, and has always demonstrated dedication to his job responsibilities, company policy and procedure, DoD security policies and

procedures, and to the DoD customer. He is recommended for a security clearance. (Applicant's Post-Hearing Exhibit B.)

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.

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 in 2005, the Applicant purchased a house by obtaining an interest only loan. This loan was scheduled to adjust after a couple of years and when it did, the Applicant could no longer afford to make the payments. It can be argued that circumstances beyond his control, namely the global financial crisis primarily caused his financial difficulties. However, he took significant risks by jumping into this type of loan in the first place. Secondly, he has not tried to send house payments to the bank or even set up a escrow account to show good faith and leverage. The consequences resulted in significant debt that he could not afford to pay. For almost two years, since January 2009, the Applicant has not made any payments on the house yet he continues to live in it.

Under the particular circumstance of this case, the Applicant has not met his burden of proving that he is worthy of a security clearance at this time. He currently owes \$85,000 in delinquent house payments. His loan has not been refinanced, his house has not been short sold, nor has it yet been foreclosed upon. His financial problems remain on the forefront. He has not shown that he has done enough to resolve his financial issues. Admittedly, he has tried to seek help in his situation, but he has not been successful. He entered into a purchase contract and obtained a loan that he did not understand. He still is not sure of its terms or conditions. This is poor judgment. He claims that he will not do it again, and will hire an attorney next time. He has not been reasonably, responsibly or prudently addressing this financial situation. He continues to reside in his house knowing he has not made a house payment in almost two years. There is insufficient evidence of financial rehabilitation at this time. At this point, the Applicant has not demonstrated that he can properly handle his financial affairs or that he is fiscally responsible. 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 c) *a history of not meeting financial obligations,* apply. Although Mitigating Condition 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,* applies, it is not controlling. He has not done enough to show that he is financially responsible. Accordingly, I find against 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 poor judgement, 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. It does not mitigate the negative effects of his excessive 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 not 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.

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