



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



In the matter of: )  
 )  
----- ) ISCR Case No. 10-09194  
 )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Department Counsel  
For Applicant: Barry M. Sax, Attorney At Law

September 29, 2011

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on July 26, 2006. (Government Exhibit 3.) On February 18, 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 9, 2011, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 19, 2011. A notice of hearing was issued on April 26, 2011, and the hearing was scheduled for May 18, 2011. At the hearing the Government presented eleven exhibits, referred to as Government Exhibits 1 through 11 that were admitted without objection. The Applicant presented four exhibits, referred to as Applicant's Exhibits A through D 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 May

25, 2011. The Applicant submitted no additional documentation. The official transcript (Tr.) was received on June 3, 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 42 years old and has a bachelor's degree in Linguistics. He is employed as the Facility Security Officer 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:

### **MOTION TO AMEND**

Department Counsel moved to amend the Statement of Reasons to include an additional allegation under Guideline F, 1(d). The proposed amendment in the SOR was to read: "You filed Chapter 7 Bankruptcy in on about February 13, 1997. Your liabilities of about \$66,000 were discharged on about June 3, 1997." Applicant's Counsel had no objection to said amendment. (Tr. p. 7.) The proposed amendment was so ordered and included 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 August 11, 2006; June 5, 2010; November 4, 2010; January 25, 2011; and May 16, 2011, collectively reflect that the Applicant was indebted to these creditors. (Government Exhibits 4, 5 8, 9 and 11.)

From July 2001 through May 2005, the Applicant served as a 1<sup>st</sup> Lieutenant in the United States Air Force. He was commissioned as an Officer in September 20--, and deployed in support of Operations Southern Watch and Operation Enduring Freedom in Afghanistan. He held a Secret and Top Secret clearance without incident during his military career.

In the early 1990's the Applicant had stellar credit and he purchased a house in his name for his mother and two sisters. The plan was for his mother, who had a health care agency business, to make the payments. (Tr. p. 54.) At some point, her business went under and she could no longer make the payments. The Applicant used his credit cards to make the payments as long as he could, and debt accumulated. Eventually the

house was short sold. The Applicant then hired an attorney to file Chapter 7 bankruptcy on his behalf in 1997. At that time, he had liabilities of \$66,000 that were discharged on about June 3, 1997. (Applicant's Exhibit A.) Following the bankruptcy, the Applicant lived a spartan lifestyle. He rented a studio apartment, finished college, and did not accrue any new debt.

In June 2003, the Applicant got married. In January 2006, he began working for his current employer. He reports to the Security Manager of the company, and has had no problems whatsoever on the job. He testified that for the past five years his performance evaluations have been rated "far exceeds expectations". As Facility Security Officer he self-reported his financial situation to his company. (Tr. pp. 89-90.)

In March 2006, the Applicant and his wife purchased a primary residence. Since they believed the real estate market was booming, in 2007 they Applicant purchased an out of state investment property with plans to rent it out and make it pay for itself. Their plan was to refinance the loans within a year, and manage the properties accordingly. In regard to the investment property, in the beginning all was going well, and the rent was covering the mortgage on the property. When the loan adjusted, he tried to get a loan modification, but he was turned down. (Tr. p. 64.) As a result, the Applicant became indebted to a mortgage lender on an account that was 120 days or more past due in the amount of \$23,470 with a balance of \$420,000. In December 2010, they put the house up for sale. They recently lowered the price and now have six offers. They are presently waiting for bank approval to agree to the short sale. (Tr. p. 54 and Applicant's Exhibit A.) He anticipates that the matter will be completely resolved in six months, as the banks are slow. The Applicant testified that if there is any deficiency owed on the loan after the short sale, he has the resources available to pay the debt. (Tr. p. 66-70.)

At some point, the Applicant's wife's income decreased by \$1,000 monthly due to furloughs on her job that were being implemented. The Applicant anticipated problems with making their mortgage payments so they started discussions with their lenders to do loan modifications. The loan modifications were not approved and the delinquent mortgage debts accumulated. (Tr. p. 61.)

When the mortgage loan adjusted on his primary residence, the Applicant found that he could also no longer afford to make the payments. He tried to modify the loan with the lenders on both the first and second loans and was turned down. He became indebted to a lender for a first mortgage that went into foreclosure in May 2010, when he could not make the payments on a balance of \$372,000. He also became indebted to the lender holding the second mortgage account that was 120 days or more past due in the approximate amount of \$10,028 with a balance of \$159,000. (Applicant's Exhibit C.) The bank agreed to a short sale of the property which was completed in August 2010. The Applicant contends that the debt on the first loan has been satisfied with the short sale. The lenders on the second loan agreed to settle the deficiency on the loan for \$10,000.00. (Tr. p .75 and Applicant's Exhibit C.) The Applicant is currently making

payments of \$500 monthly on the debt. He has paid off \$7,000 and has a remaining \$3,000 to pay within six months.

The Applicant presently has \$50,000 in his savings account, an IRA with \$30,000 in it, and a 401(k) that has \$80,000. His wife has a 403(B) that contains between \$40,000 and \$50,000 and an IRA that has between \$15,000 and \$20,000. (Tr. pp. 60 and 69.)

The Applicant is now renting a house and has no plans to purchase a home in the next ten years. He has learned that in the future, to invest in real estate he must be well prepared for the unexpected, as he must still meet his financial obligations no matter what. (Tr. p. 78-79.)

Letters of recommendation from the Applicant's Security Manager, another Facility Security Officer, a Hazardous Material Officer, a Program Manager, former Air Force associates, other professional associates, and personal friends, state that all have full confidence in the Applicant's ability to protect classified information and company proprietary information. He is described as an individual of honesty, good judgment, reliability, trustworthiness, and a man of integrity. The Applicant is well respected, and a superior performer of his duties and responsibilities. He is considered to be an asset to the organization. (Applicant's Exhibit D.)

## **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 investments, caused his financial indebtedness. Like many Americans who were caught up in this debacle, the problems that surfaced were completely unforeseeable and isolated. First and foremost, the Applicant has been honest and forthcoming by self-reported his financial difficulties concerning his mortgages to his security manager, and he did not walk away from his obligations. He has learned a harsh lesson 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. Although he lost his primary residence and his investment property, he acted responsibly and with integrity

under the circumstances. He is currently making payments to resolve the deficiency on his remaining deficiency. In regard to the investment property, the Applicant did everything he possibly could to avoid foreclosure. He is now in the process of short selling the property and has multiple offers to do so. The matter should be completed within six months. He has done the best he could under the circumstances, and as much as 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. 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.  
Subpara. 1.d.: For the Applicant.  
Subpara. 1.d.: 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