



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



In the matter of:	)	
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	)	ISCR Case No. 10-09890
Applicant for Security Clearance	)	

**Appearances**

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

November 29, 2012

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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 May 26, 2010. (Government Exhibit 1.) On March 22, 2012, 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 April 12, 2012, and he initially requested an administrative determination without a hearing. After discussions with Department Counsel and his FSO, the Applicant requested a hearing. Accordingly, Department Counsel requested that the matter be converted to a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on October 16, 2012. A notice of hearing was issued on October 23, 2012, and the hearing was scheduled for November 7, 2012. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7, which were admitted without objection. The Applicant called one witness and presented nine

exhibits, referred to as Applicant's Exhibits A through I, which were also admitted into evidence. He also testified on his own behalf. The official transcript (Tr.) was received on November 14, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **FINDINGS OF FACT**

The Applicant is 40 years old and married. He has an Associates Degree in Architecture. He is employed with a defense contractor as a Computer Aided Drafting Specialist 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 denied each of the allegations set forth in the SOR under this guideline. (See Applicant's Answer to SOR). Credit Reports of the Applicant dated June 15, 2010; October 11, 2011; September 13, 2012; and November 7, 2012, indicate that the Applicant was at one time indebted to a bank for a mortgage loan set forth in the SOR, in an amount totaling about \$500,000. (Government Exhibits 3, 4, 5 and 6.)

Prior to 2008, the Applicant had good credit. At that time, he worked full time as a self-employed private contractor, as an architectural draftsman. He had several clients who hired him to help them out with projects and earned about \$70,000 annually. He paid his bills on time, lived within his means, and had no financial problems.

In 2007, the Applicant and his partner decided to engage in their own real estate development project. As an investment, they decided to renovate a single family residence. At that time the economy was doing well and the real estate industry was skyrocketing. To finance the project, they had two private investors. One of them had the first and third liens on the property for \$250,000, the other one had the second lien on the property for \$18,000. At some point it was determined that to finish the project, the Applicant and his partner needed more money. Since the Applicant had good credit, he took out a loan for \$250,000. The lender wrapped both loans together for a total of \$500,000.

During 2008 and 2009, for a year and a half, while the economy continued to decline, the Applicant was unable to find work of any sort and had no income. He managed financially by reducing his expenses to the bare minimum. He utilized his savings, sold his possessions, and borrowed money from family to make ends meet.

The Applicant had no income as his real estate clients had no money to pay him. One of his clients that owed him \$25,000 failed to pay him, which caused serious financial difficulties. The Applicant testified that had the client paid him, the Applicant would have avoided the financial problems he encountered. The Applicant was forced to stop making the loan payments as he could no longer afford them. About this time, the value of the property significantly dropped and the real estate market plunged. One of the private investors holding the second wanted to foreclose on the property to get his money back. His interest was bought out by the investor holding the first lien. The investor holding the first lien then foreclosed on the property and took possession. The bank that loaned the Applicant the \$250,000 went bankrupt and the debt was bought by another bank. This bank then went after the Applicant civilly under their title insurance policy.

Since the Applicant was indebted to the bank for a mortgage account that was past due in the amount of \$15,658; and the house was eventually foreclosed upon, the total balance of the debt was \$519,004. To rectify the situation, on April 13, 2012, the Applicant filed for bankruptcy and discharged the debt owed to the bank that included two \$250,000 mortgages, interest at 10%, and attorney's fees. (Applicant's Exhibit B.) The debt was discharged on July 31, 2012. (Applicant's Exhibit A.) The Applicant testified that he has contacted tax professionals and he has no tax implications regarding the house.

In June 2010, the Applicant began working for his current employer. He has received two pay raises and his employer is pleased with his work performance. The Applicant has no interest in ever getting involved in a real estate investment situation again. He and his wife are renting a home.

Letters of recommendation from the Applicant's Branch Manager, Program Manager, Project Team Leader, a coworker, and a long time friend, collectively reveal that the Applicant is a most responsible, reliable, trustworthy, professional that is well respected and admired. He is also a valuable community volunteer for the local police department and neighborhood watch. He is recommended for a security clearance. (Applicant's Exhibits C, D, E, F, G and 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 obligation.

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 had good credit and paid his bills on time until he became involved in a real estate investment project that went bad. Through no fault of his own, but due to the bad economy, the real estate market plunged and he could not afford to pay for his investment. Since gaining employment in 2010, he has resolved his delinquent debts. He filed for bankruptcy and discharged his debt. His actions have been reasonable and responsible under the circumstances.

This was an isolated incident that will not recur since the Applicant is now working full time, has no real estate investments, and understands that he must remain fiscally responsible if he is to hold a security clearance. He has made a good-faith effort to resolve his past due indebtedness. He has resolved his delinquent debts. He has not incurred any new debt that he cannot afford to pay. He has clearly demonstrated that he can properly handle his financial affairs. There is clear evidence of financial rehabilitation. 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. I have considered his favorable character reference letters and employment pay raises (Applicant's Exhibit E.) 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 judgment, 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. It mitigates 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.

## **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