



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



In the matter of:)	
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)	ISCR Case No. 11-01672
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: *Pro se*

August 31, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on November 18, 2009. (Government Exhibit 1.) On March 30, 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 April 21, 2011, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on May 31, 2011. A notice of hearing was issued on June 14, 2011, and the hearing was scheduled for July 19, 2011. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7, which were admitted without objection. The Applicant presented fourteen exhibits, referred to as Applicant's Exhibits A through N. He also testified on his own behalf. The record remained open until close of business on August 9, 2011, to allow the Applicant the

opportunity to submit additional documentation. The Applicant submitted seven Post-Hearing Exhibits on August 2, 2011, which were admitted without objection, and are referred to as Applicant's Post-Hearing Exhibit A through G. The official transcript (Tr.) was received on August 2, 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 49 years old and married. He is a high school graduate with some college, just short of an Associate's Degree. He is employed with a defense contractor as an Engineering Systems Analyst 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 allegations 1(a), 1(d), 1(e), 1(f), 1(i), 1(j), and 1(k) of the SOR. He denied allegations 1(b), 1(c), 1(g), and 1(h) with some explanations. Credit Reports of the Applicant dated October 23, 1999; November 28, 2009; and January 3, 2011; reflect that the Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling in excess of \$26,000.00. (Government Exhibits 1, 3, and 5.)

The Applicant served on active duty in the United States Navy for twenty-four years from May 1991 to 2005. After retiring, he immediately started working as a civilian, for a defense contractor, working extensively with the Navy. He has held a security clearance for thirty years without a security violation.

During his marriage from 1984 to 2004, the Applicant and his wife incurred excessive indebtedness, totaling about \$47,000.00. Since the Applicant spent a significant amount of time at sea, most of the debt was incurred by his spouse, even though the credit cards were in the Applicant's name. In September 2004, his wife filed for divorce. Applicant was forced to financially maintain two separate residences, one for his spouse and child, and one for himself. The Applicant also had \$1,500.00 in attorney's fee expenses. Beginning in March 2006, the Applicant was required to pay spousal and child support in the amount totaling \$2,800.00 monthly. (Tr. p. 43.) In 2007, the divorce was final, and the decree divided the debt in half between the parties. (Applicant's Exhibit E.) The Applicant did not feel that he should be responsible for his ex-wife's debts, and in the beginning he did not want to pay them. He was angry and in a dispute with his ex-wife about the debts from 2004 until the divorce was final in 2007.

In 2009/2010, the Applicant realized that he should pay the debts, and he began to do so by addressing the larger ones first. After paying his monthly expenses, he has about \$1,300.00 left in discretionary funds in order to satisfy his debts. (Tr. p. 46.) He has also volunteered for overtime and travel assignments to earn extra money to pay the delinquent debts.

The following debts set forth in the SOR were outstanding: 1(a). The Applicant has set up a payment plan to pay a debt owed to a creditor in the amount of \$823.00. The debt was negotiated down to \$411.68, and the first of four monthly payments of \$102.92 will be paid on April 29, 2011. (Applicant's Exhibits F and G.) 1(b). A debt owed to a creditor in the amount of \$3,050.00 was paid in full on June 10, 2011. (Applicant's Exhibits F and H.) 1(c). The Applicant has set up a payment arrangement and electronic deductions from his bank account to resolve a debt owed to a creditor in the amount of \$3,314.00. (Applicant's Exhibit I and Tr. p. 50.) 1(d). The Applicant has set up a payment plan and is paying a debt owed to a creditor in the amount of \$1,637.00. (Applicant's Exhibit J and Tr. p. 52.) 1(e). A debt owed to a creditor in the amount of \$288.00, has been paid in full. (Applicant's Post-Hearing Exhibit E.) 1(f). The Applicant has negotiated an agreed settlement amount regarding a debt owed to a creditor in the amount of \$1,040.00. He will resolve the account for a total of \$541.60, the first payment of \$279.80 is to be automatically deducted from his bank account and paid the week of the hearing. (Tr. p. 56.) 1(g). A debt owed to a creditor in the amount of \$5,490.00 has been paid in full. (Applicant's Exhibit K.) 1(h). A debt owed to a creditor in the amount of \$3,542.00 has been paid in full. (Applicant's Exhibit L.) 1(i). The Applicant has settled a debt owed to a creditor in the amount of \$1,519.00. (Tr. p. 59.) 1(j). A debt owed to a creditor in the amount of \$160.00, has been paid off. (Applicant's Post-Hearing Exhibit D.) 1(k). The Applicant has set up a payment plan and is paying a debt owed to a creditor in the amount of \$692.00. (Applicant's Post-Hearing Exhibit G.)

Applicant's Post-Hearing Exhibit D indicates that the Applicant has now addressed each of the debts listed in the SOR and is working hard to resolve them. Presently, he is no longer paying child support, but is required to pay \$1,522.00 monthly for spousal support for another six years that is automatically deducted out of his paycheck. (Tr. p. 45.)

A letter from the Applicant's program manager who has worked closely with the Applicant for the past ten years was submitted. The Applicant is said to perform his duties in an outstanding manner. He is dedicated to the job, loyal to the company and the country. He has been entrusted with classified materials and always handled it appropriately. He is recommended for a security clearance. (Applicant's Exhibit A.)

Applicant's performance evaluations from 2005 through 2010 reflect ratings that exceed performance requirements or are outstanding in every category. (Applicant's Post-Hearing Exhibit A.)

The Applicant has received a number of awards and commendations for his outstanding work performance. (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 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 circumstances largely beyond the Applicant's control, namely, a wife that enjoyed spending money, and a divorce and its related expenses, caused his financial difficulties. When he and his wife divorced, he was stuck with all of her debt. He has taken responsibility for the debt and, since 2010, has been working diligently within his means to resolve the indebtedness.

Under the particular circumstance of this case, this was an isolated incident that will not recur since the Applicant is no longer married to the woman. He has made a good-faith effort to resolve his past due indebtedness. Since 2010 he has addressed each of the delinquent debts. He has either completely resolved the debt or set up a payment plan with the creditor that he is following. He does not plan on incurring any new debt. He has acted reasonably, responsibly and prudently. 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 clear 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 obligation*, 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 military and 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.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.

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

