



**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. 11-01878

**Appearances**

For Government: Jeff A. Nagel, Department Counsel

For Applicant: Joseph Testan

April 24, 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 October 18, 2010. (Government Exhibit 1.) On August 17, 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 September 29, 2011, and initially requested an administrative decision without a hearing. He subsequently requested the matter be converted to an administrative hearing before a DOHA Administrative Judge. An Amendment to the SOR was issued to the Applicant on November 8, 2011. The Applicant submitted his response to the Amendment on November 27, 2011. The case was assigned to the undersigned Administrative Judge on January 20, 2012. A notice of hearing was issued on February 7, 2012, and the hearing was scheduled for February 13, 2012. The Applicant requested a continuance and the matter was

continued and rescheduled for March 14, 2012. At the hearing the Government presented five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant called one witness and presented twelve exhibits, referred to as Applicant's Exhibits A through L that were admitted without objection. He also testified on his own behalf. The official transcript (Tr.) was received on March 26, 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 55 years old and married with two children. He is employed with a defense contractor as an Air Vehicle Pilot 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 allegations 1(a), and 1(b) with some explanations. (See Applicant's initial Answer to SOR.) He admitted allegations 1(c), 1(d), 1(e) and 1(f) of the SOR. (See Applicant's response to Amendment to SOR.) Credit Reports of the Applicant dated October 30, 2010 and June 8, 2011 reflect that the Applicant was indebted to each of the creditors set forth in the SOR. (Government Exhibits 2 and 3.)

In 2000, the Applicant and his wife purchased a single family home for their primary residence. At that time, they were both gainfully employed, she as a registered dental assistant, and he as a Network Engineer. They paid their bills on time and had no financial problems. (Tr. p. 35.)

In December 2005, caused by her prolonged standing on the job, the Applicant's wife began suffering left knee pain that eventually led to a hip replacement in December 2006. That same month, she filed for state disability. (Applicant's Exhibit J.) She was unable to work for a while. Upon the recommendation of her physician, she changed occupations and began working as a Senior Care Giver. The pay is half of what she was earning as a dental assistant. Then, in May 2007, the Applicant was laid off from his job. He found it difficult to find work and was unemployed or underemployed for sometime. Since then, the Applicant has not earned as much as he had before. This was a significant financial set back for the Applicant and caused his financial difficulties.

To exacerbate his financial situation, in May 2009, one evening around midnight while he was sleeping, the dryer in the garage had some lint buildup that caught on fire.

As a result, the fire gutted the garage with both of their vehicles and \$50,000 worth of computer equipment. (Applicant's Exhibit I.) The Applicant had property insurance for the structure but no insurance for the contents. (Tr. p. 78.)

The Applicant's wife testified that it was only after her medical problems that the Applicant experienced financial difficulties. She stated that her husband is trustworthy, honest and reliable. (Tr. pp. 34 - 42.)

The Applicant has a son who is autistic and must not be left unsupervised. When the Applicant, his wife or daughter is unable to stay with his son, the Applicant must hire someone to watch him, which costs money. (Tr. p. 81.)

Due to their financial hardships, the following debts became delinquent and owing. 1(a). A debt owed to Creditor A in the amount of \$2,300 became delinquent. The Applicant started making payments toward the debt and eventually paid off the creditor over two years ago. (Tr. p. 51, and Applicant's Exhibit A.)

1(b). A debt owed to Creditor B for the mortgage on the Applicant's primary residence in the amount of \$272,619.00 became delinquent and was placed into collections. After several unsuccessful attempts to modify the loan, the Applicant reached a loan modification agreement in 2012. He is currently making payments according to the agreement and will continue to do so. (Applicant's Exhibits B, C and D.)

1(c). A judgment entered against the Applicant in June 2008, owed to Creditor C for a medical bill in the amount of \$2,273.00 has been paid in full. (Tr. p. 56, and Applicant's Exhibit E.)

1(d). A debt owed to Creditor D in the amount of \$15,000 became delinquent and was referred to collection. The Applicant entered into a repayment agreement with the creditor and has been making the monthly payments according to the plan. He currently owes about \$13,200. (Tr. p. 63, and Applicant's Exhibit F.)

1(e). A debt owed to Creditor E in the amount of \$44,764.00 became delinquent. The Applicant entered into a repayment agreement with the creditor and has been making the monthly payments according to the plan. He is currently making payments of \$100 monthly. (Applicant's Exhibit G.)

1(f). A debt owed to Creditor F in the amount of \$142,243.00 became delinquent and was placed into collection. (Applicant's Exhibit H.) The Applicant entered into a repayment agreement with the creditor and has been making the monthly payment according to the plan. He is currently making payments of \$100 monthly. (Tr. p. 65.)

The Applicant is current with all of his monthly expenses and he has no other delinquent debts. He has set up a strict financial budget that he is following. He has a positive monthly cash flow. (Applicant's Exhibit L.) In the event that he receives a

security clearance, he will be deployed overseas and his salary will significantly increase, enabling him to increase his monthly payments toward his creditors and resolve his debts sooner. He testified that he would never do anything to jeopardize the national security. (Tr. p. 90.)

Letters of recommendation from professional and personal associates submitted on behalf of the Applicant describe him as professional, responsible, ambitious, a dependable team player, an individual with good character and high moral values. The Applicant is always willing to tackle whatever task he is asked to perform, and is highly recommended for a security clearance. (Applicant's Exhibit K.)

## **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 before 2005, the Applicant had no financial difficulties. He paid his bills on time and had an excellent credit rating. After 2005, circumstances largely beyond the Applicant's control, namely, his wife's hip problems and occupation change, coupled with his job lay-off and periods of unemployment and underemployment, followed by the garage fire, significantly impacted his finances. Despite these hardships, the Applicant has addressed each of his delinquent debts set forth in the SOR. He has either paid off the debt in full, or is currently making regular monthly payments suitable to the creditor that he plans to continue until the debt is paid. In regard to those creditors that he is making payment to, he plans to increase the payments and resolve the debt much sooner when his salary increases. He has taken responsibility for the debt and has been working diligently within his means to resolve the indebtedness.

Under the particular circumstance of this case, he has made a good-faith effort to resolve his past due indebtedness. He has set up a financial budget 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 receipts for proof of payments, favorable letters of recommendation, and witness testimony. 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.

## **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