



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



In the matter of:

ISCR Case No. 11-03511

Applicant for Security Clearance

**Appearances**

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

December 21, 2011

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) dated January 18, 2007. (Government Exhibits 1 and 2.) On May 5, 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 29, 2011, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on August 30, 2011. A notice of hearing was issued on September 22, 2011, and the hearing was scheduled for October 19, 2011. At the hearing the Government presented ten exhibits, referred to as Government Exhibits 1 through 10 that were admitted without objection. The Applicant called one witness and presented fifteen exhibits, referred to as Applicant's Exhibits A through O 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 October 29, 2011. The Applicant submitted three Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A through C, which were admitted without objection. The official transcript (Tr.) was received on November 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 65 years old, and has a Bachelor's Degree in Business Administration. He is employed as a Principal Systems Specialist 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:

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 each of the creditors for delinquent tax liens and debts listed in the SOR under this guideline. Credit Reports of the Applicant dated February 7, 2007; March 30, 2010; and April 20, 2011, collectively confirm that the Applicant was indebted at one time in the amount of \$106,000 to these creditors. (Government Exhibits 3, 5, and 7.)

Prior to 2007, the Applicant paid his bills on time and had good credit. In late 2007, the Applicant decided to adjust his finances in such a way as to allow his wife to quit her job and go to school full time. The adjustment involved refinancing their home and related mortgages. The Applicant thought that they would have sufficient monthly cash flow to achieve these goals. They did not stick to the planned budget and spent money that did not have. They secured an interest only mortgage, and got behind in monthly mortgage payments and were unable to bring it current. The Applicant purchased a second car that he could not afford. After four to six months in mortgage arrearage, his house went into foreclosure. As a consequence, the Applicant fell behind on his financial obligations. He eventually realized that his wife's income was critical to the household expenses.

The Applicant explained that in 2009, as his house was being foreclosed upon, he went to the credit union to get a car, and was told about houses that had been repossessed that he could qualify for. The credit union offered him a loan and a house on terms that he felt he could not refuse, and he purchased the second house and moved into it. (Tr. pp. 74-76.)

In regard to his first home that was being foreclosed upon, the Applicant tried to obtain a loan modification and then a short sale but was unsuccessful. The bank would not accept less than full payment to bring the account current, which the Applicant could not afford to pay. The Applicant was under the reasonable impression that the first and second trust deed on his foreclosed house were charged off at that time. The Applicant self-reported his home foreclosure to his company security officer. (Government Exhibit 4.)

As a result of this poor financial management, the Applicant became indebted to the following creditors. For the past two years he has been working hard to resolve his debts. A debt owed to a creditor in the amount of \$1,309 is being paid through a payment plan of \$100 monthly that he will continue until it is paid in full. (Applicant's Exhibit A.) A debt owed to a creditor in the amount of \$1,408 has been paid in full. (Applicant's Exhibit B.) The Applicant believes that a debt owed to bank in the amount of \$51,159 for a mortgage loan on a house that was foreclosed upon has been forgiven. (Applicant's Exhibit C.) The Applicant believes that a debt owed to a bank in the amount of \$28,606 for a mortgage on a house that was foreclosed upon has been forgiven. (Applicant's Exhibit D.) A debt owed to a creditor in the amount of \$2,281 has been resolved. (Applicant's Exhibit E.) A debt owed to a creditor in the amount of \$320 has been resolved. (Applicant's Exhibit F.) The Applicant believes that a debt owed to a bank for a first mortgage loan on a house that was foreclosed upon in the amount of \$812,000 has been forgiven. (Applicant's Exhibit C.) The Government moved to strike the debt owed to a creditor in the amount of \$11,533. Accordingly, this allegation was found for the Applicant. (Tr. p. 91 and Applicant's Exhibit C and Tr. p. 45.) A debt owed to a creditor in the amount of \$2,254 is a duplicate of the debt set forth in 1(d) that has been paid in full. (Applicant's Exhibit D and Tr. p. 46.) A payment plan has been set up for a debt owed in the amount of \$19,983 for a vehicle that was voluntarily repossessed. The Applicant is currently paying \$100 monthly toward the debt. He plans to increase the payment to \$300 monthly by January 2012 and will continue with the payment plan until the debt is paid in full. (Tr. pp. 47-49.)

In January 2009, the Applicant hired a debt resolution company to assist him in resolving his debt. Since then, the Applicant has contacted and paid off or settled, or is in the process of paying, all of his delinquent debts with the exception of the mortgages. He has contacted the banks regarding the mortgages and is waiting for their response to resolve the matters. (Applicant's Post-Hearing Exhibits A, B and C.) He is also receiving ongoing financial counseling from the same company. He pays them \$68.00 monthly for their services. (Tr. pp. 93 and 95.) The Applicant has not accumulated any new debt for the past two years and is working hard to become debt free.

Applicant's financial statement indicates that after paying his mortgage and the regular monthly expense, he has approximately \$2,100 left at the end of the month. (Tr. p. 82 and Applicant's Exhibit O.)

When asked whether he learned anything from the experience, the Applicant stated,

Okay. I've learned not to over-extend myself, not to promise to make payments that I'm not able to make, to allow for discretionary income, to leave it as discretionary income for emergencies. I've learned to negotiate up front and not make promises to make monthly payments that I cannot afford. Thus, I have a worksheet that I use that lets me know per month what I have – some months are a little higher than others – that I can present a balanced budget to the family, on going and never to be in that situation again. I will not and never will put myself nor my family in jeopardy because of foolish and ill-advised purchases.

The Applicant's pastor, who is a very close friend of the Applicant and his family, testified admirably about the Applicant. The Applicant is described as a man of great character with integrity, honesty, respect, and trustworthiness. He is said to be a good husband and father, who is a valuable member of the church and also serves as a Board Member. With no reservations, the Applicant is highly recommended for a security clearance. (Tr. pp. 98 -110.)

Performance appraisals of the Applicant for 2011, indicate that he either "meets" or "exceeds" all expectations on his job. (Applicant's Exhibit L.) The Applicant has also received a number of awards and commendations for his accomplishments at the company. (Applicant's Exhibit L.)

## **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.(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 made some very poor financial decisions that contributed to his financial indebtedness. He overextended himself financially and brought on many of his problems. In addition, like many Americans, he got caught up in the real estate interest only loans debacle, and was unable to make the payment adjustments to the loans when they became due. For the past two years, the Applicant has been working hard to resolve his indebtedness. He has resolved all of his outstanding debt, except the mortgages on the foreclosed house. He is in contact with the banks and currently addressing these matters. Given the circumstances, he has done the best he could under the circumstances, and as much as humanly possibly 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. He is receiving financial counseling and is now living

within a budget. 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 problems 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, witness, performance evaluation 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.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.

#### **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**