



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 11-08619  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Julie Mendez, Department Counsel  
For Applicant: *Pro se*

February 12, 2013

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on December 6, 2010. (Government Exhibit 4.) On August 31, 2012, the Department of Defense (DoD), 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 in writing on September 11, 2012, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on or about October 16, 2012. The Applicant received the FORM on October 25, 2012. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. The Applicant failed to submit a reply to the FORM. This case was assigned to the undersigned on December 14, 2012. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

## FINDINGS OF FACT

The Applicant is 37 years old, never been married, and has no children. He is employed with a defense contractor as an Solutions Architect 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) and 1(c) set forth in the SOR under this guideline. He denies allegation 1(b) and contends that he settled the debt. Credit Reports of the Applicant dated June 25, 2012 and December 15, 2010, reflect that the Applicant is indebted to each of the creditors set forth in the SOR in an amount totaling in excess of \$477,000. (Government Exhibits 5 and 6.) He has been working for his current employer since February 2009.

In 2005, the Applicant and a friend purchased an investment property financed with an adjustable rate first mortgage of \$245,000 and a second mortgage of \$100,000. (Government Exhibit 7.) His total monthly mortgage payment began at \$2,500 and adjusted up to \$3,000 in 2007. The Applicant was renting it out for \$1,600 per month. In 2007, he tried to get the loan modified but was unsuccessful. The property was subsequently foreclosed upon. Due to the foreclosure, the second mortgage owned by Wells Fargo was charged off in the approximate amount of \$97,943. The Applicant contends that he set up a payment plan with a law firm to address the second mortgage. He states that he is currently making monthly payments of \$658.00 toward the debt. (Government Exhibit 7.) There is no evidence in the record to prove that the payment he made was for the debt owed to the creditor.

The Applicant also took out a line of credit with Bank of America in order to pay for expenses on the foreclosed investment property. This account also became delinquent and was placed for collection in the amount of \$27,979. (Government Exhibit 5 and 6.) The Applicant states that he arranged a settlement agreement through his attorneys to satisfy this debt in the amount of \$11,000. He provided a copy of the settlement offer letter from his attorneys. (Government Exhibit 7.) There is no evidence in the record as to whether the Applicant complied with the terms of this offer.

The Applicant also has a delinquent mortgage debt related to his primary residence. In 2007, he purchased his primary residence and secured an adjustable rate mortgage for this purchase. His mortgage was with Aurora Bank for \$352,000. (Government Exhibit 5.) The initial mortgage payment was \$1,500, but was set to adjust upward to \$2,800 in January 2011. In about December 2010, the Applicant

began efforts to modify his loan but was denied. His house ultimately went into foreclosure. (Government Exhibit 7.) The Applicant has provided no documentation related to the foreclosure, or whether the house was subsequently sold, or the status of the mortgage. Thus, it can be assumed that he still owes the debt and has not paid it.

## **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:

None.

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 or dishonesty, 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). The 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 poor choices that overextended him financially. His financial investments included two properties which were foreclosed upon because he entered into adjustment rate mortgages that adjusted upward that he could not afford to pay. He contends that he has paid one of the debts off entirely and is currently making payments to resolve the other. The Applicant failed to reply to the FORM and did not provide sufficient evidence to establish mitigation here. He did not provide sufficient documentation to corroborate his assertions. Assuming he has paid off one of the debts and is making payments toward the other, he still remains tremendously indebted to the creditor for the loan on his primary residence in the amount of approximately \$353,000. He has not explained anything concerning the status of that debt and it remains unresolved and unaddressed.

Under the particular circumstances of this case, the Applicant has not met his burden of proving that he is worthy of a security clearance. It is the Applicant's burden to prove that he has resolved his delinquent debts. In this case, he has fallen short of showing this. Thus, it cannot be said that he has made a good-faith effort to resolve his past-due indebtedness. He has not shown that he is or has been reasonably, responsibly or prudently addressing his financial situation. Assuming that he continues to work to resolve his debts, and then shows that he has not acquired any new debt that he is unable to pay, and that he provides adequate documentation to support his payments and what they are for, he may be eligible for a security clearance in the future. However, not at this time. Considering all of the evidence, the Applicant has not 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. Mitigating Condition 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* applies, but is not controlling. Accordingly, I find against 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 poor judgement, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations,

and/or other characteristics indicating that the person may not properly safeguard classified information.

I have considered all of the evidence presented. It does not 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 not overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against 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:	Against the Applicant.
Subpara. 1.a.:	Against the Applicant.
Subpara. 1.b.:	Against the Applicant.
Subpara. 1.c.:	Against the Applicant.

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge