



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



In the matter of: )  
 )  
----- ) ISCR Case No. 11-11848  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Department Counsel  
For Applicant: Alan V. Edmunds, Attorney At Law

October 25, 2012

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (SF-86) on May 31, 2011. (Government Exhibit 1.) On March 7, 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 24, 2012, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 17, 2012. A notice of hearing was issued on July 26, 2012, and the hearing was scheduled for September 19, 2012. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant called two witnesses and presented twenty exhibits, referred to as Applicant's Exhibits A through T which were also admitted without objection. He also testified on his own behalf. The record remained open until close of business on September 26, 2012, to allow the Applicant

the opportunity to submit additional documentation. The Applicant did not submit any additional documentation. The official transcript (Tr.) was received on September 25, 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 39 years old and divorced with one child. He is employed with a defense contractor as a Chief Operating Officer 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 each of the allegations set forth in the SOR under this guideline. Credit Reports of the Applicant dated July 2, 2011; February 3, 2012; June 28, 2012; and September 15, 2012, reflect that the Applicant was at one time indebted to each of the creditors set forth in the SOR, in an amount totaling in excess of \$20,000. (Government Exhibits 2, 4, 5, and 6).

The Applicant testified that he became delinquently indebted due to a divorce, that was finalized in 2008. He incurred expenses that required that he pay \$1,500 monthly in child support and the costs of a legal team to prepare the paperwork. During this same time, he started a brand new start-up business. He and his partner funded the business with their own savings, using their 401(k) plans and all of their checking and savings. It cost the Applicant approximately \$200,000 of his own money to start the company. He used his credit cards to keep himself going during this period. He is now current on all of his bills. His company is doing well, his income of \$13,000 a month is comfortably meeting his expenses. He is also saving \$150 every paycheck toward an emergency fund. (Tr. p. 49.)

Each of the delinquent debts listed in the SOR have been addressed and the Applicant submitted documentary proof of payment. 1(a). A credit card debt owed to the creditor placed into collection in the amount of \$20,000 has been settled for a payment of \$4,000. (Tr. p. 39; and Applicant's Exhibit O.) 1(b). A credit card debt owed to a creditor that was 90 days or more past due in the amount of \$2,000 has been paid and the account is current. He owes approximately \$28,000 on the account. (Tr. pp. 40, 50-51; and Applicant's Exhibit P.) 1(c). A debt owed to a creditor that was 60 days or more past due in the amount of \$1,000 has been paid and the account is current. He owes approximately \$16,000 on the account. (Tr. pp. 4, 52; and Applicant's

Exhibit Q.) The Applicant is current with all of his bills and can now comfortably pay his debts. His most recent credit report reflects a credit score of 673. (Tr. p. 41.) He also completed a credit counseling course. (Applicant's Exhibits K and L.)

Two character witnesses testified on behalf of the Applicant. One of the witnesses has known the Applicant for fourteen years and they have worked and played sports together. In his opinion, the Applicant is a quality individual who is trustworthy and responsible. (Tr. p. 28-31.)

The other witness testified that he has known the Applicant for over nine years and is the co-founder of the company with the Applicant. He testified that he is aware of the financial difficulties that the Applicant went through. Since their company was a self-funded start-up company and they went without income for a nine month period, they have suffered some financial difficulties. He states that the Applicant used his savings and assets to get the company off the ground. The company has now become a profitable business. He considers the Applicant trustworthy and responsible. (Tr. pp. 33-36.)

Letters of recommendation submitted on behalf of the Applicant from his ex-wife, his partner in business, a coworker, and a business associate are all favorable. Collectively, they consider the Applicant to be a dedicated parent and employee who is responsible, trustworthy, professional, honorable and a hard worker. He is highly recommended for a security clearance. (Applicant's Exhibits A, B, C and D.)

## **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.

Prior to 2008 the Applicant had good credit, was not overextended, and paid his bills on time. In 2008, circumstances largely beyond his control, namely a divorce and its related expenses, in combination with the extraordinary costs involved in the Applicant’s start-up business, caused his financial problems. Since then, his business has been profitable and the Applicant has paid off his past due indebtedness and brought his accounts current. He is now earning income and is comfortably able to pay his bills.

This was obviously an isolated incident that will not recur. The Applicant’s divorce is now final and he has settled with his ex-wife. His company has become profitable and he now receives a paycheck. The Applicant 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 paid off his past-due indebtedness and is current on each of his debts listed in the SOR. He has also completed financial counseling courses and he has not incurred any new debt. He understands the importance of paying his bills on time and living within his means. 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 witnesses and letters. (Tr. pp. 28 - 36 and Applicant's Exhibits A, B, C and D.) 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 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.

## **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