



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 11-13133
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Department Counsel  
For Applicant: Katherine Bailey, Personal Representative

June 28, 2013

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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 May 26, 2011. (Government Exhibit 1.) On January 25, 2013, 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 February 11, 2013, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on April 8, 2013. A notice of hearing was issued on April 24, 2013, and the hearing was scheduled for May 29, 2013. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant presented eight exhibits, referred to as Applicant's Exhibits A through H, which were also admitted into evidence. He also testified on his own behalf. The record remained open until close of business on June 5, 2013, to allow the Applicant to submit additional documentation.

The Applicant submitted four Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A through D, which were admitted without objection. The official transcript (Tr.) was received on June 10, 2013. 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 with five children. He is President and CEO of a homeland security consulting firm. As a defense contractor he is seeking a security clearance to be eligible for classified government contracts.

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 each of the allegations set forth in the SOR under this guideline and provided an explanation. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated June 15, 2011; August 31, 2012; and May 22, 2013, reflect that at one time Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling over one million dollars. (Government Exhibits 2, 3 and 6.)

The Applicant served in the United States Marine Corps for twenty years from July 1981 until September 2001, when he was honorably discharged. Applicant held a Top Secret/SCI security clearance for at least twelve of those twenty years.

In 1996, Applicant purchased his primary residence (house A) for \$487,000. In 2005, he and his wife were doing well financially, and they decided to purchase the house next door to theirs (house B) as an investment. Their intent was to use it as rental property. They refinanced their primary resident (house A) and pulled out \$450,000. The purchase price of house B was \$970,000. The sellers of house B were willing to carry back the second for \$560,000. Applicant explained that from 2005 to 2009 his wife worked as a Regional Vice President of a bank and she was earning about \$130,000 in base salary plus bonuses. At that time, Applicant was earning \$140,000 annually. Their combined income was almost \$300,000 annually. The bank his wife worked for was seized by the FDIC and resold. Applicant's wife was eventually laid off in the spring of 2010. The household income was cut in half and the Applicant could no longer afford to pay the mortgages. Applicant consistently tried to negotiate with the bank that held the loan on house B, but negotiations proved ineffective. Applicant continued to make the payments on the property of \$2,795 monthly for house B, and \$5,500 monthly on house A, for as long as he could. In order to do this, he exhausted \$75,000 from his 401(k). Applicant knew that the loan called for a balloon

payment of \$250,000 and that he needed to obtain a loan modification before it became due. In April 2011, Applicant stopped making payments on the loans and used that money to pay off about \$40,000 in credit card debts.

At some point, the mortgage company on house B sold the Applicant's loan to another company who gave Applicant the impression through documentation that a loan modification had been arrived at. (See Applicant's Exhibits B and C.) Applicant testified that he even made a payment under the new terms and conditions and then the loan was resold back to the original loan holder. The original loan holder did not honor the loan modification so the Applicant was again in financial troubles. At some point, the Applicant became indebted to the mortgage lender for a past due mortgage in the amount of \$368,000. Applicant hired an attorney to represent him with regards to house B and to try to force the mortgage company to honor the loan modification arrived at by the previous loan holder. Applicant eventually decided not to pursue the matter as he wanted to hold on to the property. He continued to try to negotiate with the loan holder and in December 2012, he obtained one. (See Applicant's Exhibit D.) This modification reduced the mortgage payment on the rental property to \$2,243.22 for the new principal and interest payments and \$856.46 for the impound/escrow payment for a total of \$3,099. (Applicant's Exhibits D and E.) Since the loan was modified, the Applicant has been current on the loan. He currently owes \$608,643 on the loan.

During this same period, Applicant was also in financial trouble with his primary residence, house A. Simultaneously with his other efforts, he was also trying to obtain a loan modification for house A. He was not successful at getting a loan modification on this house and was forced to short sale it. Applicant became indebted to the mortgage lender for the account that had been charged off in the amount of about \$125,000. In November 2012, the Applicant moved out of house A and into house B. The short sale on house A was complete in December 2012. Applicant testified that the debt was settled as part of the short sale of his residence. (See Applicant's Exhibit F.) He also provided documentation that shows that the loan has been paid off and the grant deed is no longer in his name.

Applicant also became indebted to another mortgage company on house A in the amount of \$1,085,601. (See Applicant's Exhibit F.) Applicant testified that this debt was also settled by the short sale of the property. Applicant's documentation shows that the grant deed is no longer in the Applicant's name, and that the balance owed is zero. (See Applicant's Exhibit F.) Applicant indicates that as a result of the short sale transaction, he received two 1099-C forms for Cancellation of Debt. His accountant indicates that he qualifies to exclude the cancellations of debt income from his taxable income in 2012 under the rules of insolvency, IRS Code Section 108(d)(3). (Applicant's Post-Hearing Exhibit B.) Therefore, Applicant is exempt from having to pay taxes. (Tr. p. 97.)

Applicant's personal financial budget shows a monthly income of \$9,516.00 without his wife's income. Their combined income was about \$14,300 monthly. (Applicant's Exhibit G.) The financial budget also shows other assets, including a

commercial property and an interest in a winery. Applicant stated that there were no assets available to sell in order to pay the mortgages. In regards to the commercial property, he could not sell it because its value was less than he owed on the property loan. They were also unable to access the money from their interest in the winery because their interest had not vested.

Since this experience, Applicant has made several changes in his lifestyle to reduce his overhead. Although his wife has been unable to find stable employment with a bank, she started her own business managing vacation rentals, and it is doing well. Her income is forecasted this year at \$70,000. His children no longer attend private school, which has significantly reduced his annual debt. Applicant contends that this saves \$16,560 annually in expenses. (Applicant's Post-Hearing Exhibits A and D.)

A letter from the President and CEO of the company dated June 3, 2013, indicates that in 2008 Applicant served as Vice President of Preparedness Services. He was promoted to Senior Vice President in 2010, and subsequently to President and CEO, WHS, in 2011. Applicant is said to have been a driving force behind the company's success and has helped to grow the company into a multi-million dollar, bi-coastal homeland security professional services company. (Applicant's Post-Hearing Exhibit C.)

A letter of recommendation dated June 3, 2013, from a local city Acting Chief of Police whose department has received professional consulting services from the Applicant's company, indicates that Applicant uniquely understands the needs, objectives and operational procedures required in the area of preparedness services. Applicant is genuinely invested in improving the disaster preparedness of his clients. Applicant is professional and courteous, and highly committed to the job. Applicant is recommended for a security clearance. (Applicant's Post-Hearing Exhibit C.)

A letter of commendation dated May 3, 2010, awarded to the Applicant by the Lieutenant of the Sheriff's Emergency Response Team recognizes him for a job well done regarding a missing person search operation. (Applicant's Post-Hearing Exhibit C.)

## **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 the Applicant only became delinquently indebted after his wife lost her job, which significantly reduced their income. This situation was simultaneously aggravated by a downturn in the real estate market, the balloon payment on his home loan, and his inability to get a loan modification. Applicant has now obtained a loan modification on his rental property that has now become his primary residence. He is able to afford the payments and is current on the loan. The house that was his primary residence was short sold and he owes nothing to the lender. He has now resolved his past due indebtedness. He has acted responsibly and reasonably under the circumstances. I do not believe that the Applicant strategically arranged this loan default and short sale for the purpose of improving his financial position.

These humbling, unpredictable, and unfortunate circumstances were isolated incidents that will hopefully not recur. Applicant's financial situation has stabilized and his wife now has a job. He understands that he must remain fiscally responsible if he is to hold a security clearance. Under the circumstances he had done the best he could. He has made a good-faith effort to resolve his past due indebtedness, and he has resolved his delinquent debts. He has not incurred any new debt that he cannot afford to pay and in fact has reduced some of his expenses. He has clearly demonstrated that he can properly handle his financial affairs. There is clear evidence of financial rehabilitation. In the event that he becomes excessively indebted again, his security clearance will be in immediate jeopardy. 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. 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. It mitigates 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