



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



In the matter of:	)	
-----	)	
	)	ISCR Case No. 11-14334
Applicant for Security Clearance	)	

**Appearances**

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

September 11, 2013

\_\_\_\_\_  
**Decision**  
\_\_\_\_\_

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (E-QIP) on February 6, 2006. (Government Exhibit 1.) On March 4, 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 April 26, 2013, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on July 2, 2013. A notice of hearing was issued on July 3, 2013, and the hearing was scheduled for July 23, 2013. At the hearing the Government presented eleven exhibits, referred to as Government Exhibits 1 through 11, which were admitted without objection. The Applicant presented seven exhibits, referred to as Applicant's Exhibits A through G, which were also admitted into evidence without objection. He also testified on his own behalf. The record remained open until close of business on August 13, 2013, to allow the Applicant to submit

additional documentation. The Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. The official transcript (Tr.) was received on August 5, 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 66 years old and married. He has an Associate Degree in Metals Technology from the Community College of the Air Force, and holds the position of Inspector for a defense contractor. He 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 the allegation set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated March 3, 2006; August 30, 2011; December 10, 2012; and February 22, 2013, reflect that at one time Applicant was indebted to the creditor set forth in the SOR, in an amount totaling over \$151,000. (Government Exhibits 2, 4, 5 and 8.)

Applicant served in the United States Air Force from 1968 to 1988, before receiving an honorable discharge after twenty years of service. Following his military career, the Applicant began working in the defense industry as a civilian.

Throughout his military career and up until 2005, Applicant always paid his bills on time and had good credit. In March 2004, he was employed as a member of a Contract Field Team consisting of about 20 employees. This team travels anywhere necessary to fulfill short term work contracts. During travel, the Applicant was paid per diem (which amounted to as much as half of his pay) in addition to his regular salary. In 2004, one particular contract was expected to last three to six months with a possible maximum of one year. The contract kept extending and looked like it was going to continue indefinitely. In 2005, instead of continuing to pay rent, seven of the team employees, including the Applicant, decided to purchase a house not knowing all of the rules required in order to continue to receive per diem from the company. Applicant purchased his house for \$205,000. He put \$16,000 down with the intention of keeping the monthly payments low. The house payments were \$1400 monthly that he could comfortably afford to pay. He states that his supervisor was not aware of the rules or regulations concerning per diem but did know that they had to be at least 50 miles away

from their home of record in order to receive it. (Tr. p. 39.) At some point, Applicant learned that in order to receive per diem he could not purchase a house in the area because he would then be considered a resident and per diem would stop.

Several months after he purchased the house, his company found out about it, and his per diem stopped. It was also about this time that the housing market collapsed in the state and property was difficult to sell. This caused the Applicant serious financial problems. Without the per diem, he struggled to make the house payments. He tried to work as much overtime as possible, but it was not enough to maintain the payments. After struggling like this for about two and a half years, he obtained a transfer from this work assignment to another and his per diem was reinstated. He then started to get caught up on his bills. He noted that he was 90 days delinquent on his mortgage payments and contacted the mortgage company to work out an agreement and was told that his house was in foreclosure. In order to stop the foreclosure the Applicant would have to pay \$5,000 down and \$5,000 monthly for six months. He was unable to afford to do so.

In July or August 2010, he tried to obtain a loan modification, but was not successful. (Tr. p. 44-45) He states that at some point the bank agreed to a loan modification but sent the correspondence to his previous address, which was not forwarded to him. The bank only informed him about it when he was told that he missed his first payment, which voided the agreement. The bank then told the Applicant that the only option available to him was a short sale. Applicant contacted a realtor and started the short sale process. The process was not successful, and Applicant's house was eventually foreclosed upon by the lender in January 2011. In June 2012, the lender sold the house to another party for \$90,100. Applicant was issued a Form 1099A from the mortgage company. Applicant's attorney indicates that the highest possible deficiency that could be entered against Applicant would be \$24,399.99 and that the lender has until July 1, 2014, to pursue a deficiency. (Applicant's Post-Hearing Exhibit A.) In regards to the second loan on the property, which was a line of credit that the Applicant used to make repairs on the property, the actual balance is \$39,950. The Applicant indicates that he has been in contact with the lender and plans to start making payments over and about the normal monthly payments. (Tr. p. 86.)

Since 2010, Applicant's financial situation has vastly improved. In addition to his regular salary, in September 2013, he will start receiving Social Security Benefits in the amount of \$2,048 monthly. He recently inherited \$10,000 from his mother who passed away. Applicant is current with all of his other financial obligations and is living within his means. (Tr. p. 58.) His credit score has improved and is reporting at 656 by one of the credit agencies. According to his financial payment plan, he expects to be completely out of debt by the end of the year. (Tr. p. 60.)

Applicant's personal financial statement dated July 18, 2013, indicates that after paying all of his monthly expenses and debts, he has a net remainder of \$3,069 left at the end of the month. (Applicant's Exhibit F.)

A letter of recommendation from one of the Applicant's supervisor's who has worked with the Applicant for the past five years states that Applicant goes above and beyond what is expected of him in the job. He is honest, responsible, a person of high integrity and loyalty. He is the first to volunteer to help others. (Applicant's Exhibit E.)

A letter of recommendation from another supervisor of the Applicant, who the Applicant has worked for in one capacity or another, indicates that Applicant's work product produces the highest standard of quality. He has consistently shown honesty, trustworthiness and loyalty. He is a person of integrity who has knowledge, workmanship and a desire to succeed. He is recommended for a security clearance. (Applicant's Exhibit B.)

Letters of recommendation from coworkers indicates that Applicant is intelligent, trustworthy, honest and motivated on the job. He does an exceptional job and pays great attention to detail. He has maintained the highest level of accountability, integrity, and dedication to the job, his coworkers and the company. He accomplishes all tasks at the highest standards and is considered a trusted and valued member of the team. (Applicant's Exhibits 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.

The evidence shows that the Applicant only became delinquently indebted after he purchased a house that he thought would benefit him. In actuality this purchase caused him serious financial problems. Without sufficient knowledge of his company's per diem policies, simultaneously aggravated by a downturn in the real estate market and his inability to get a loan modification or a short sale, his house was foreclosed upon. The Applicant has been working with his attorney, who has informed him that under the circumstances he will more than likely not be held responsible for any deficiency on the first mortgage on the house. If he is, he will arrange to pay it. Applicant is current on the payments on the second line of credit. He has now resolved his past due indebtedness. He has acted responsibly and reasonably under the circumstances. Furthermore, there is no evidence in the record to show that the Applicant strategically arranged this loan default for the purpose of improving his financial position.

These humbling, unpredictable, and unfortunate circumstances were isolated incidents that will not recur. Applicant now understands the company's per diem policy, his financial situation has stabilized, and his income has significantly increased without per diem. 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, including his twenty years of military service and the favorable letters of recommendation in his current job. 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.

## **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