



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 09-00800  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Department Counsel  
For Applicant: *Pro Se*

January 25, 2010

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Questionnaire for Sensitive Positions (SF-86) on January 6, 2009. (Government Exhibit 1). On July 22, 2009, 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 August 3, 2009, and he requested an administrative decision without a hearing. Department Counsel requested a hearing and the matter was converted from an Administrative decision to a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on September 11, 2009. A notice of hearing was issued on September 15, 2009, and the hearing was scheduled for November 19, 2009. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6. The Applicant presented six exhibits, referred to as Applicant's Exhibits A through F. He also testified

on his own behalf. The record remained open until close of business on November 29, 2009, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted one Post-Hearing Exhibit which was admitted without objection, as Applicant's Post-Hearing Exhibit. The official transcript (Tr.) was received on December 1, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **FINDINGS OF FACT**

The Applicant is 34 years old, unmarried, with two children. He has a Bachelor Degree in Computer Science. He was previously employed with a defense contractor as a Systems Engineer and a Storage Internet Architect, and if he obtains a security clearance he will be rehired. 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.

From 1993 to 2003, the Applicant served honorably in the United States Army. During those ten years, he held a security clearance and was honorably discharged in 2003, after a stellar career. Applicant then began doing contract work for various defense contractors, and experienced periods of unemployment between contracts. This caused some financial difficulties. In July 2009, the Applicant was terminated from his employment because he did not have a security clearance. In the event that Applicant obtains a security clearance and is rehired, he states that it is his priority to resolve all of his debts, and he plans to do so within six months. (Tr. p. 83).

The Applicant admits to eight of the debts set forth in the SOR (allegations 1(a), 1(e), 1(f), 1(h), 1(i), 1(j), 1(k), and 1(n)). He denies six of the debts (allegations 1(b), 1(c), 1(d), 1(g), 1(l) and 1(m)). Credit Reports of the Applicant dated May 29, 2008, February 26, 2009, June 25, 2009, and November 14, 2009, reflect that the Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$25,000. (Government Exhibits 3, 4, 5, and 6). Applicant explained that he was not aware of the delinquent debt listed in the SOR until after his interview with the investigator. At that time, he learned that his partner, who had been living with him and handling the household finances, had not been paying the bills, even though the Applicant had been bringing home the paycheck. Applicant was so misled that, among other problems, he lost all of his belongings in a storage unit, including his personal and childhood memories, because his partner did not make the payments, when she represented that she did. Since then, the Applicant has made progress clearing up his

credit report, paying off his bills, setting up payment plans, and terminating his relationship with his partner.

The following delinquent debts are listed in the SOR;

1(a). A debt owed to a creditor in the amount of \$255.00 has been paid in full. (Applicant's Exhibit B, Applicant's Post-Hearing Exhibit, and Tr. p. 32).

1(b). A debt owed to a creditor in the amount of \$566.00 remains outstanding. Applicant is not sure whether the debt is his, as the creditor has been unable to confirm the debt. If it is determined to be his debt, he will pay it. (Tr. p. 44).

1(c). A debt owed to a bank for a delinquent credit card account in the amount of \$19,750.00 has been resolved. Applicant testified that the debt is not his. He also provided documentation from the creditor indicating that he is not an authorized user on the account and is therefore not responsible for the debt. (Applicant's Exhibit A, and Applicant's Post-Hearing Exhibit).

1(d). A debt owed to a creditor in the amount of \$1,408.00 remains outstanding. Applicant believes the debt involves identity theft or the misuse of his personal information by other parties. Applicant has filed for identity theft protection. He has no knowledge of the debt and has tried to contact the creditor but they no longer exist. It could possibly be his former partners debt. If it turns out that he owes the debt, he will pay it. (Tr. p. 40).

1(e). A debt owed to a creditor in the amount of \$355.00 remains outstanding. Applicant had set up a payment plan of \$50.00 per month to satisfy the debt but when he lost his job he was unable to continue with the payments. (Tr. p. 41). He will resume the payments when he is rehired.

1(f). A debt owed to a creditor in the amount of \$5,340.00 remains outstanding. Applicant explained that he co-signed for a vehicle for his mother. She was supposed to make the payments but did not. Applicant is presently reestablishing a payment plan with the creditor and plans to resolve the debt in full. (Tr. p. 43-44).

1(g). A debt owed to a creditor in the amount of \$2,635.00 is erroneous and has been removed from the Applicant's credit report. (Applicant's Post-Hearing Exhibit, Applicant's Exhibit C, and Tr. p. 46).

1(h). and 1(i). Debts owed to two different creditors in the amount of \$1,073.00 and \$6,339.00 have been combined and Applicant has set up a payment plan of \$100.00 per month. (Applicant's Post-Hearing Exhibit).

1(j). A debt to a creditor in the amount of \$135.00 has been paid. (Applicant's Exhibit C, and Tr. p. 52).

1(k). A debt to a creditor in the amount of \$513.00 remains outstanding. Applicant set up a payment plan of \$50.00 per month and will resume the agreement when he is employed. (Applicant's Exhibit E, and Tr. p. 53).

1(l). A debt to a creditor in the amount of \$6,528.00, is actually \$528.00. The account was disputed and has since been deleted from all three credit reporting agencies. (Applicant's Answer to the SOR).

1(m). A debt owed to a creditor in the amount of \$512.00 has been resolved. The account was disputed and has been removed from the Applicant's credit report. (Applicant's Answer to the SOR).

1(n). A debt originally owed to the IRS in the amount of \$10,989.00 has been adjusted and Applicant now owes \$688.00. Applicant provided a copy of a release of levy dated November 18, 2008. (Applicant's Exhibit F). Applicant plans to contact the IRS and set up a payment plan to resolve the debt when he becomes employed.

## **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;

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;

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 predicted 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 circumstances largely beyond the Applicant's control, namely, his ex-partner who misled him into believing the bills were being paid when they were not, coupled with various periods of unemployment, caused his financial difficulties. Although the Applicant is still unemployed, he has done as much as is humanly possible to inquire into and resolve his financial problems. First, the Applicant is no longer with his deceptive partner, and has learned a harsh lesson from putting someone other than himself responsible for his debts. Second, he has contacted his creditors and informed them of his situation. Third, he has either paid off the delinquent debt or set up a payment plan that he plans to follow once he gains employment.

Under the particular circumstance of this case, the Applicant has made a good faith effort to resolve his past due indebtedness. He has contacted each of his creditors and has either paid off the debt or is setting up a payment plan to do so. He does not plan on incurring any new debt. He understands the importance of paying his bills on time and living within his means. He also understands that he must follow his commitment to continue to pay off his delinquent debt. There is 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 obligation* 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 the Applicant's favorable military 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.  
Subpara. 1.k.: For the Applicant.  
Subpara. 1.l.: For the Applicant.  
Subpara. 1.m.: For the Applicant.  
Subpara. 1.n.: 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