



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



In the matter of: )  
 )  
----- ) ISCR Case No. 14-03877  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Department Counsel  
For Applicant: Ryan C. Nerney, Attorney At Law  
The Edmunds Law Firm

April 23, 2015

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (E-QIP) on December 10, 2013. (Government Exhibit 1.) On October 27, 2014, 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 the Department of Defense (DoD) 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.

Applicant responded to the SOR on November 18, 2014, and he requested an administrative hearing before a Defense Office of Hearings and Appeals (DOHA) Administrative Judge. This case was assigned to the undersigned Administrative Judge on February 18, 2015. A notice of hearing was issued on February 19, 2015, and the hearing was scheduled for March 17, 2015. At the hearing the Government presented four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant called three witnesses and presented twelve exhibits, referred to as Applicant's Exhibits A through K, which were also

admitted into evidence without objection. He also testified on his own behalf. The record remained open until close of business on March 27, 2015, to allow the Applicant to submit additional documentation. 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 March 25, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **FINDINGS OF FACT**

Applicant is 41 years old, with three children, and in the process of divorce. He has just completed his Associate's Degree and is starting his Bachelors. He holds the position of Test Engineer 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.

Applicant admitted the allegations set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated January 11, 2014; February 4, 2015; and March 15, 2015, reflect that Applicant is indebted to each of the creditors set forth in the SOR. (Government Exhibits 2, 3 and 4.)

Applicant served in the United States Marine Corps from 1993 to 1997. He entered for a second tour in 2000 and served until he was honorably discharged in 2009. The highest rank he achieved was Sergeant E-5. He served four tours in Iraq, and after becoming a civilian, he has gone to Afghanistan twice for a total of three years. During his military career, he received a number of awards and commendations that include the Navy and Marine Corps Achievement Medal, The Good Conduct Medal, a Presidential Unit Citation, a Navy Unit Citation and various other awards. (Applicant's Exhibit F.) In February 2009, when he left the military, he was immediately hired by his current employer. He has held a security clearance at some level off and on, when needed, since 1994.

As a young Marine, Applicant became indebted to several creditors by financially overextending himself. He explained that at that time he purchased things for his barracks he really could not afford, such as televisions, a refrigerator, and a microwave, etc. 1.a. A delinquent debt owed to an electronics store in the amount of \$1,401 was outstanding. Applicant testified that he has contacted the creditor and is in the process of setting up payment arrangements to resolve the debt. Following the

hearing, Applicant contacted the creditor who now indicates that the account no longer exists. After reviewing his most recent credit report from all three reporting agencies the debt no longer appears. (Applicant's Post-Hearing Exhibit A.)

1.b. A delinquent debt owed to a military credit card in the amount of \$5,100 remains outstanding. Applicant explained that he opened the card in 1995, and thought that the matter had been resolved, since it did not show up on his credit report. About six months ago, when he learned that the debt was still owing, he contacted the creditor to resolve the debt. He states that he is in the process of setting up a payment plan to resolve the debt.

1.c. A delinquent tax debt owed to the Internal Revenue Service for tax year 2006, in the amount of \$21,690 is being paid. Applicant is currently making monthly payments of \$200.00 to resolve the debt. He testified that he recently submitted an Offer in Compromise to continue making payments of \$200 monthly until the debt is resolved in full. (Tr. pp. 77 and 78.)

1.d. A delinquent tax debt owed to the State taxing authority for tax liens entered against the Applicant in 2006, and 2009, in the approximate amount of \$11,746.11 was outstanding. Applicant has paid this debt off in full. (Tr. pp. 67, 77 and Applicant's Exhibit K.)

Applicant explained that he incurred the delinquent tax debts in 2006, when he was on a popular television game show and won a little over \$220,000. When he was presented with the check, no taxes were taken out. Applicant was looking to purchase a home at the time, and after talking to the lender, it was recommended that he use the home equity line of credit to pay off the taxes, since the housing market was escalating at the time. Applicant did not realize at the time that the market was topped off. It was further explained to the Applicant that since he was a first time buyer, there were certain tax write-offs that he would be eligible for that would mitigate a big portion of the taxes he owed. Also, since the housing market was rising, he would immediately acquire equity in the house that he could use to pay the taxes. Applicant stated that he relied on what he was told by the bank as it applied to his taxes. The lender was ultimately investigated for fraudulent lending practices and Applicant was part of a class action lawsuit against them. Applicant received a settlement in the approximate amount of a couple hundred dollars for his inconvenience. (Tr. p. 64.)

About two years after receiving his winnings, when the housing market tanked, Applicant learned that the advice he was given by the lender was erroneous. In 2007, he contacted a tax resolution service for help. Due to Applicant's marital difficulties, aggravated by constant deployments, Applicant ended up having to short sale the house during the summer of 2013. He explained that he was under water with the home, and the housing market never corrected. Applicant states that he incurred no tax liability from the short sale transaction. (Tr. pp. 65-66.)

Applicant testified that since becoming indebted for back taxes, he has always made payments to resolve them. Applicant's Exhibit B is an agreement he had with the IRS in 2012. There was some confusion while he was in Afghanistan concerning how his income tax returns were filed, and the payment plan he had arranged was dissolved. Applicant is now back on a payment plan of \$200 a month that he has been following for the past six months. (Applicant's Exhibit D and Tr. p. 69.)

He states that he has never failed to file in income tax returns in a timely fashion. (Tr. p. 80.) He further testified that he clearly understands his responsibilities and obligations that come with holding a security clearance, and he would never do anything to compromise his integrity or to be a burden on the Marine Corps or any other military units that he works with. (Tr. p. 74.)

Applicant's monthly budget reveals that he currently earns about \$65,000 a year from his salary. He receives a VA disability in the amount of \$980, and Basic Allowance for housing with his post-9-11 GI Bill of \$2,000 a month. He states that he can comfortably make his payments to resolve his debts and pay his \$1,300 a month in alimony and child support. He also has a 401k that contains close to \$50,000.

Three witnesses testified favorably on behalf of the Applicant. A coworker testified that Applicant has a good work ethic, is timely in completing his assignments, has good judgment and is an honest person. A coworker, who was also Applicant's previous supervisor, stated that Applicant is diligent, timely, consistent, always professional, trustworthy and honest. Applicant's current supervisor testified that Applicant has great work ethics, is proficient on the job, trustworthy, and exceeds expectations in his performance reviews. (Tr. pp. 26-48.)

Letters of recommendation from various Marine Corps officers, who have served with the Applicant, indicate that Applicant is a highly trustworthy and responsible individual. He is a professional in every sense of the word, and is always going the extra mile to complete the tasks assigned. He is considered to be an upstanding citizen and proactive member of the community. His dedication to the Marine Corps did not end with him leaving the service. He has dedicated himself to continuing to support his fellow Marines by working with them as a contractor and completing multiple deployments to Afghanistan in support of their operations. Applicant is well respected by his colleagues and highly recommended for a security clearance. (Applicant's Exhibit A.)

## **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 obligations.

### 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;
- 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 behavioral 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 adjudication 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 that 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 Applicant contends that his large game show winnings in 2006, and bad tax advice from his lenders during the purchase of his house, contributed, if not caused, his financial problems concerning his Federal and State taxes owed. Assuming that was the case, the Applicant has provided documentation showing that the debt to the State tax authority has been resolved. Applicant states that for the last six months he has been and intends to continue making monthly payments of \$200 to resolve his Federal tax debt. He is also in negotiations with the IRS to arrive at a final settlement. In the event that Applicant does not follow through with his payment plan and resolve his Federal tax debt, his security clearance will be in immediate jeopardy.

In regard to his two remaining delinquent debts, they are solely Applicant's fault. He spent money he did not have, and he did not pay them in a timely fashion. Applicant states that after contacting the creditor set forth in 1.a., he was informed that the account no longer exists. After reviewing his credit report, the debt is no longer showing delinquent on his credit report. The debt set forth in 1.b., remains owing. Applicant states that he is in the process of setting up a payment plan to resolve the debt, however, he did not provide any documentation to show this. Applicant must follow through with resolving the debt. In the event that Applicant ignores the debt, and does not resolve it soon, or in a systematic manner, his security clearance will be in immediate jeopardy.

Under the circumstances, however, overall, Applicant is making a good-faith effort to resolve his debts. He understands that he must remain fiscally responsible if he is to hold a security clearance. He has not incurred any new debt that he cannot afford to pay, and he is working to resolve his remaining two debts. He has set up a budget that he is following to live within his means and pay off his bills. There is clear evidence of financial rehabilitation. In the event that he cannot meet his financial obligations in the future, his security clearance will be immediately in jeopardy. However, at this time, 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 judgment, 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 testimony of his witnesses and the favorable letters of recommendation. 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 E3.1.25 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

### **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

