



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 14-03384  
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Applicant for Security Clearance )

**Appearances**

For Government: Caroline E. Heintzelman, Department Counsel  
For Applicant: *Pro se*

October 2, 2015

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) dated April 14, 2013. (Government Exhibit 2.) On September 2, 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 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 in writing on September 29, 2014, and elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to Applicant on April 17, 2015. Applicant received the FORM on April 22, 2015. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant submitted a response to the FORM, referred to as Applicant's Exhibit A. This case was assigned to the undersigned on May 29, 2015. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

## FINDINGS OF FACT

Applicant is 58 years old. She has a high school diploma and an associate's degree. She is employed with a defense contractor as a Receptionist/Administrative Assistant and is seeking to obtain a security clearance in connection with this employment.

The Government opposes 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 Applicant is ineligible for clearance because she is financially overextended and at risk of having to engage in illegal acts to generate funds.

Applicant has an extensive history of delinquent indebtedness. She admits each of the allegations set forth in the SOR. Between the years of 2004 and 2013, Applicant experienced unexpected hardships that contributed to her financial indebtedness. Namely, a divorce from her first husband, two work lay-offs followed by 45 months of unemployment, and a second husband's death. When she returned to the workforce, in 2013, on a full-time basis, she found it difficult to get caught up with her bills.

From 2011 to the present, Applicant has been self-employed operating her own business from her home as a bankruptcy petition preparer. She works about two to four hours a week around her current employment, and does not have a business license. In 2012, she started receiving a pension benefit from her previous employer for her and her deceased husband.

Applicant has filed bankruptcy five times between 1988 and 2013. She filed for Chapter 7 Bankruptcy protection for the first time in about 1988. She explained that at that time, she was divorcing her first husband, and she did not make enough money to pay her half of the marriage bills. Her debts were discharged.

In 1997, Applicant filed for Chapter 13 Bankruptcy protection. Shortly after filing, she had a car accident and incurred serious head injuries that required hospitalization. She states that her attorney told her that she should ask the court to dismiss the bankruptcy as he was going to receive an adequate amount of money from the settlement to pay her bills. The bankruptcy petition was dismissed in 1998.

In May 2006, Applicant filed for Chapter 7 Bankruptcy protection. This time her second husband had died from cancer and she was left with his medical expenses that she could not afford to pay. She was also laid off from work due to a reduction in force in April 2006. She was unemployed from about eight months from April 2006 until January 2007. Her debts were discharged in October 2006.

In February 2010, Applicant filed for Chapter 13 bankruptcy protection. This time she wanted help paying her federal and state back taxes, and wanted to avoid having her wages garnished. After filing this petition, she was laid off from her employment. Applicant claims that she was laid off due to a reduction in force.

Her background investigation discloses that at one time she had been issued a letter of reprimand for failing to show up for work. She was unable to go to work as she had been arrested for DUI and was in jail. She had her brother report her absence in a timely manner to her employer on her behalf. Applicant refused to sign the letter of reprimand and nothing more became of the situation. After being laid off of the job, Applicant tried to keep up with the payment to the court, but her unemployment benefits were not enough to do so. The court dismissed her bankruptcy petition in April 2011. At this point, all of her delinquent debt remained owing.

Applicant was either unemployed or underemployed from February 2010 until March 2013. She was hired by her current employer and began working full time in March 2013. At that time, she applied for a security clearance, and reported to the investigator when questioned about her excessive debt that she would re-file her Chapter 13 bankruptcy since her previous one was dismissed.

In August 2013, Applicant refiled her Chapter 13 bankruptcy petition. (Government Exhibit 9.) She states that she has been on her three year plan for one year and nine months. She states that she currently has a payroll deduction of \$100 per pay period sent to the trustee for distribution of monies to her creditors. She states that she is currently up to date with her payments to the court. Applicant contends that she will not have a discharge date until all of the monies due to the court are paid in full and she estimates this to be August 2016. (Applicant's Exhibit A.)

Credit reports of the Applicant dated March 26, 2015; May 29, 2014; April 24, 2013; and November 2006, reflect that each of the delinquent debts in the SOR were at one time owing. (Government Exhibit 5, 6, 7, and 8.) Presently, she has twenty-one past due debts totaling approximately \$26,000. These debts include delinquent federal income taxes, four judgments filed against her by various creditors, an eviction for back rent owed, and other miscellaneous delinquent debt.

## **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.

Condition that could mitigate security concerns:

None.

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 a history of excessive indebtedness (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 her security clearance eligibility.

Applicant's history of indebtedness is troubling. There is insufficient evidence in the record to show that she is or can be financially responsible. Even considering the unfortunate circumstances that contributed to her financial problems, that include a divorce, two job lay-offs, and a death, Applicant has not shown that she can be fiscally responsible on her own. Her history over the years shows that she has either filed bankruptcy to discharge or dismiss her indebtedness, but there is no real evidence to demonstrate that she can live within her means and pay her bills in a timely fashion without court supervision.

Furthermore, Applicant does not provide details regarding how, more specifically, the divorce from her first husband, and the death of her second husband, impacted her financially. It is understandable that loss of employment can cause financial difficulties. However, even so, Applicant's indebtedness remains excessive.

For the past two years, Applicant has been working full time in the defense industry, part-time in her own business, and receiving pension benefits from her previous employer. She states that she is currently complying with the Chapter 13 bankruptcy plan. (Applicant's Exhibit A.) She must continue to establish a pattern of fiscal responsibility for a prolonged period, indicating that she can now live within her means and pay her bills on time. The investigative records show that even when she was working, she had problems paying her rent.

Applicant's history of delinquent indebtedness, without sufficient mitigation, demonstrates a pattern of unreliability and poor judgment. Applicant failed to provide proof of payment, receipts, or any documentation to demonstrate that she has or will resolve her delinquent debts. Without more, the Applicant has failed to establish that she is fiscally responsible.

Under the particular circumstances of this case, Applicant has not met her burden of proving that she is worthy of a security clearance. She has had to use bankruptcy as a crutch over the past years on five separate occasions. Thus, it cannot be said that she can properly handle her financial obligations or that she has made a good-faith effort to resolve her past due indebtedness with legal assistance. Under these particular circumstances, she has not shown that she is or has been reasonably, responsibly or prudently addressing her financial situation that is of concern to the Government. At this point, Applicant has not demonstrated that she can properly handle her financial affairs or that she is fiscally responsible. Her debts are significant. Assuming that she demonstrates a history and pattern of fiscal responsibility, by resolving her delinquent debts, she may be eligible for a security clearance sometime in the future. However, she is not eligible now. Considering all of the evidence, Applicant has not 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. In this case, none of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

I have also considered the "whole-person concept" in evaluating 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 poor judgement, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

I have considered all of the evidence presented. It does not mitigate the negative effects of her delinquent financial history and the effects that it can have on her ability to safeguard classified information. On balance, it is concluded that Applicant has not overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports a finding against 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:		Against the Applicant.
Subpara.	1.a.	Against the Applicant.
Subpara.	1.b.	Against the Applicant.
Subpara.	1.c.	Against the Applicant.
Subpara.	1.d.	Against the Applicant.
Subpara.	1.e.	Against the Applicant.
Subpara.	1.f.	Against the Applicant.
Subpara.	1.g.	Against the Applicant.
Subpara.	1.h.	Against the Applicant.
Subpara.	1.i.	Against the Applicant.
Subpara.	1.j.	Against the Applicant.
Subpara.	1.k.	Against the Applicant.
Subpara.	1.l.	Against the Applicant.
Subpara.	1.m.	Against the Applicant.
Subpara.	1.n.	Against the Applicant.
Subpara.	1.o.	Against the Applicant.
Subpara.	1.p.	Against the Applicant.
Subpara.	1.q.	Against the Applicant.
Subpara.	1.r.	Against the Applicant.
Subpara.	1.s.	Against the Applicant.
Subpara.	1.t.	Against the Applicant.
Subpara.	1.u.	Against the Applicant.

## **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge