



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 14-04692

**Appearances**

For Government: Phillip J. Katauskas, Department Counsel  
For Applicant: *Pro se*

February 25, 2016

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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) May 8, 2014. (Government Exhibit 5.) On January 8, 2015, 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 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 January 22, 2015, 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 or about September 11, 2015. Applicant received the FORM on September 18, 2015. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant submitted a reply to the FORM, referred to as Applicant's Exhibits A through C. This case was assigned to the undersigned on November 10, 2015.

Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

## FINDINGS OF FACT

Applicant is 48 years old, and is married with one adult daughter. He has an Associates degree and is a Federal contractor working for a defense contractor as a Computer Consultant. He 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 he is financially overextended and at risk of having to engage in illegal acts to generate funds.

There are eight delinquent debts set forth in the SOR totaling approximately \$12,586. Applicant admitted each of the allegations under this guideline. Applicant's credit report dated May 22, 2014, which includes information from all three credit reporting agencies, indicates that Applicant was at one time indebted to each of the creditors listed in the SOR. (Government Exhibit 7.)

Applicant attributes his delinquent debts to a downturn in the economy. From 2006 to the present, Applicant has been self-employed as a Computer Consultant. From January 2014 to March 2014, Applicant was unemployed and was supported by his savings and spouse's income. He states that he was receiving unemployment benefits for a while. His e-QIP lists no period of unemployment. Applicant apparently took unemployment benefits because his income was insufficient to live on. The following debts became delinquent and owing.

1.a., Applicant became indebted to a creditor for a delinquent medical account in the amount of \$601. Applicant initially claimed that the debt is still under review by the insurance company. Applicant's Response to the FORM indicates that he has recently set up a payment plan to resolve the debt. He submitted a copy of his credit union statement showing that he started making payments in October 2015. (Applicant's Exhibit B.)

1.b., Applicant is indebted to a creditor for a delinquent medical account placed into collection in the amount of \$1,224. Applicant initially claimed that the debt is still under review by the insurance company. Applicant's Response to the FORM indicates that he has recently set up a payment plan to resolve the debt. He submitted a copy of his credit union statement showing that he started making payments in October 2015. (Applicant's Exhibit B.)

1.c., Applicant is indebted for a judgment filed against him in June 2013 in the amount of \$4,723. This debt involved a delinquent credit card. Applicant contends that the debts listed in 1.c and 1.h are the same debt. Applicant submitted copies of money orders made out to FIA card services showing that he began making payments to the creditor in May 2014. (See allegation 1.h).

1.d., Applicant is indebted for a medical account placed for collection in the amount of \$200. Applicant initially claimed that the debt is still under review by the insurance company. Applicant's Response to the FORM indicates that he has recently set up a payment plan to resolve the debt. He submitted a copy of his credit union statement showing that he started making payments in October 2015. (Applicant's Exhibit B.)

1.e., Applicant is indebted to a creditor for a delinquent medical account in the amount of \$895. Applicant initially claimed that the debt is still under review by the insurance company. Applicant's Response to the FORM indicates that he has recently set up a payment plan to resolve the debt. He submitted a copy of his credit union statement showing that he started making payments in October 2015. (Applicant's Exhibit B.)

1.f., Applicant is indebted to a creditor for a delinquent medical account in the amount of \$174. Applicant initially claimed that the debt is still under review by the insurance company. Applicant's Response to the FORM indicates that he has recently set up a payment plan to resolve the debt. He submitted a copy of his credit union statement showing that he started making payments in October 2015. (Applicant's Exhibit B.)

1.g., Applicant is indebted to a creditor for an account that was placed for collection in the amount of \$581. Applicant claims that this was an oversight and he plans to aggressively pay it off. Applicant's Response to the FORM indicates that he paid \$232.33 on April 4, 2015, to settle the debt in full. (Applicant's Exhibit C.)

1.h., Applicant is indebted to a creditor in the amount of \$4,188. This debt concerns a delinquent credit card. Initially, there was no evidence in the record to show how much, if anything, has been paid toward the debt. Applicant's response to the FORM indicates that he is making payments of \$125 monthly toward the debt that started at \$5,395 and has been reduced down to \$2,521.72. He plans to continue with his payment plan until the debt is paid in full. (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;

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 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 that is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order adverse to an applicant 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 Applicant has been financially irresponsible (Guideline F). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of Applicant. Because of the scope and nature of Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

The evidence presented shows that Applicant has been working to resolve his debts. It appears that for a time he was employed, but not earning enough to pay his bills. He was then unemployed for a short time and fell behind on some bills. He has recently started a new job, and now believes he has sufficient income to pay off his delinquent debts. His documentary evidence shows that he is working diligently to pay off his delinquent debts.

Under the particular circumstances of this case, Applicant has met his burden of proving that he is worthy of a security clearance. He has a concrete understanding of his financial responsibilities and has sufficiently addressed his delinquent debts in the SOR. Thus, it can be said that he has made a good-faith effort to resolve his past-due indebtedness. He has shown that he is or has been reasonably, responsibly, or prudently addressing his financial situation. Thus, Applicant has demonstrated that he can properly handle his financial affairs. He must continue to completely resolve his delinquent indebtedness by following his payment plans. He must demonstrate a history and pattern of financial responsibility, including the fact he has not acquired any new debt that he is unable to pay. Considering all of the evidence, 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, in this case, Mitigation 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 debt* are also applicable. For a time, Applicant was not earning enough money to live on and was collecting unemployment benefits. He now has a new job and is paying off his delinquent debts. It can be said that he has made a good-faith effort to satisfy his delinquent debts. In fact, he has shown that he is financially responsible. Accordingly, I find for 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 good judgement, trustworthiness, reliability, candor, 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 does mitigate the negative effects of his history of financial indebtedness and the effects that it can have on his ability to safeguard classified information. On balance, it is concluded that Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for 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 1.25 of Enclosure 3 of the Directive are:

Paragraph 1:		For Applicant.
Subpara.	1.a.	For Applicant.
Subpara.	1.b.	For Applicant.
Subpara.	1.c.	For Applicant.
Subpara.	1.d.	For Applicant.
Subpara.	1.e.	For Applicant.
Subpara.	1.f.	For Applicant.
Subpara.	1.g.	For Applicant.
Subpara.	1.h.	For 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 Applicant. Eligibility for access to classified information is granted.

Darlene Lokey Anderson  
Administrative Judge