



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. 14-06262

**Appearances**

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

January 28, 2016

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on April 10, 2014. (Government Exhibit 1.) On March 14, 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 the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR on April 8, 2015, and he requested a hearing before a Defense Office of Hearings and Appeals (DOHA) Administrative Judge. This case was transferred to the undersigned Administrative Judge on August 12, 2015. A notice of hearing was issued on that same day, and the hearing was scheduled for September 22, 2015. At the hearing the Government presented four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant presented no exhibits, however he testified on his own behalf. Applicant requested that the record remain open in order to submit additional documentation. The

record remained open until close of business on September 30, 2015. Applicant did not submit any documentation. The official transcript (Tr.) was received on September 30, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

Applicant is 48 years old, married a second time, and has four children, two from each marriage. He has a high school diploma, military training and six months of college. He is employed with a defense contractor as a lieutenant third shift watch commander 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 he is financially overextended and at risk of having to engage in illegal acts to generate funds.

Applicant served in the United States Army from 1985 to 1992 as a combat medic. He left the Army as an E-1 or E-2. Applicant has been married twice. He has two children from each marriage. He currently pays child support to his children from his first marriage. Applicant is now married to his second wife and also providing financial support for the two children that live with him. His wife is currently employed earning \$14 per hour. He loves his family and has found it difficult to support two families on his income.

Applicant started working for his current employer in November 2013. He has been working anywhere from 32 to 40 hours per week. He states that he worked hard for the job, and is earning \$15 an hour. He is now a supervisor. In July 2015, Applicant got a second security guard job, and is working 40 hours per week there.

There are eight delinquent debts set forth in the SOR totaling in excess of approximately \$100,000. Applicant admitted each of the allegations under this guideline. Credit reports of the Applicant dated April 25, 2014; July 1, 2015 and September 19, 2015, which includes information from all three credit reporting agencies, reflect that Applicant remains indebted to each of the creditors listed in the SOR. (Government Exhibits 2, 3 and 4.)

Applicant's work history shows that he is not afraid to work. At one time he had three jobs. Due to cutbacks and downsizing he lost jobs in the past. For a period of two years, from 2006 to almost 2008, he was unemployed. During this period, he became delinquently indebted to a number of creditors listed in the SOR. Applicant is now

working two jobs, for a total of almost 80 hours, and believes that he can now begin to address his delinquent debts. Applicant stated that he was four months behind on his mortgage payment and is now only three months behind. However, each of the delinquent debts listed in the SOR remain outstanding.

1.a., a delinquent credit card debt owed to a department store in the amount of \$441 remains owing. Applicant believes he opened the account in 1995 and has not made a payment for five or six years. He has contacted the creditor about a payment plan but was told that they only wanted the full amount. (Tr. p. 28.)

1.b., a delinquent credit card debt owed to a creditor in the amount of \$1,298 remains owing. Applicant states that he was making payments on the account until he lost his jobs in 2006. He has not made any payments on the account since then.

1.c., a delinquent mortgage account in the amount of \$89,000 remain owing. Applicant explained that this was the second mortgage on his home. A new loan program in his state allowed him to modify the original loan by taking the second loan and either completely forgiving it, or placing it on the back of the loan. Applicant is not sure which was done. He does know that he received an IRS Form 1099, and that he may have had to pay some taxes due to the transaction. (Tr. pp. 44-45.)

1.d., a delinquent debt owed to a dentist in the amount of \$699 remains owing. Applicant states that he had dental insurance and was initially told that his dental work would be covered, only to later find out that it was not covered. (Tr. p. 33.) He incurred this debt about a year and a half ago. (Tr. p. 34.)

1.e., a delinquent debt owed to a cable company in the amount of \$277 remains owing. Applicant contends that this fee is for a cable box. He believes that he returned the box. He last spoke to the creditor about this issue in 2008.

1.f., a delinquent debt owed to a creditor in the amount of \$974 remains owing. Applicant does not know what the debt is for, although he noticed it on his credit report. (Tr. p. 36.)

1.g., a delinquent debt owed to a creditor in the amount of \$7,500 remains owing. Applicant explained that in 2009 he purchased a time share in Las Vegas. He paid \$25 a month for about eight months, before the payment increased, and he stopped making payments. He returned the time share to the company. He does not know if they were able to sell the property.

1.h., A delinquent debt owed to a department store in the amount of \$2,100 remains owing. Applicant contends that his ex-wife opened this account after their divorce. Applicant did not co-sign on the account and believes his wife committed forgery.

Applicant testified that he is currently spending more money than he is bringing in. He testified that there are always things that his ex-wife needs for the children, like dresses to the prom, brakes for the car, and food. His current wife also needs things for their children. (Tr. pp. 52-53.)

## **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:

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.

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 each of the delinquent debts set forth in the SOR remain owing. Admittedly, circumstances occurred that were beyond the Applicant's control that contributed to his financial problems. Namely, his two years of unemployment, and of course the difficulties involved in maintaining two households. However, since 2008, Applicant has been gainfully employed. There is a legitimate question as to whether the Applicant's second mortgage has been forgiven, or whether it has been placed at the back of his loan. Even so, he remains excessively indebted, and unable to pay his delinquent debts. He recently obtained a second job to help with his delinquencies. At this point, however, nothing has been addressed. There is no evidence in the record to show that he has changed his lifestyle or his spending habits, or that he has worked to resolve the debts listed in the SOR.

Applicant's history of excessive indebtedness, without sufficient mitigation, demonstrates a pattern of unreliability and poor judgment. There is nothing in the record to show that Applicant can live within his means. Without more, the Applicant has failed to establish that he is fiscally responsible. Furthermore, there is no evidence that he has received credit counseling to help him set a budget and learn to live within it, or that his finances are under control.

Under the particular circumstances of this case, Applicant has not met his burden of proving that he is worthy of a security clearance. He does not have a concrete understanding of his financial responsibilities and has not sufficiently addressed his delinquent debts in the SOR. Thus, it cannot be said that he has made a good-faith effort to resolve his past due indebtedness. He has not shown that he is or has been reasonably, responsibly or prudently addressing his financial situation. Applicant has not demonstrated that he can properly handle his financial affairs or that he is fiscally responsible. His debts are significant and he continues to spend more money than he has. Assuming that he demonstrates a history and pattern of fiscal responsibility, including the fact he has not acquired any new debt that he is unable to pay, he may be eligible for a security clearance sometime in the future. However, he 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. It can be argued that Mitigating Condition 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 applies, because of his unemployment situation. However, this mitigating condition is not controlling. Applicant did not act responsibly under the circumstances. He ignored the situation and continued to spend money he did not have. He has still not set up any payment plans to resolve his delinquent debts. Applicant could benefit from intense financial counseling. 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 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 not overcome the Government's case opposing his 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.

## **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