



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



In the matter of: )  
 )  
----- ) ISCR Case No. 14-06602  
 )  
Applicant for Security Clearance )

**Appearances**

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

December 8, 2015

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**Decision**  
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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on April 25, 2014. (Government Exhibit 1.) On April 2, 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 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 answered the SOR in writing on April 16, 2015, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on July 16, 2015. A notice of hearing was issued on August 28, 2015, scheduling the hearing for September 15, 2015. The Government offered six exhibits, referred to as Government Exhibits 1 through 6, which were received without objection. The Applicant presented four exhibits, referred to as Applicant's Exhibits A through D, which were admitted into evidence without objection. She also testified on her own behalf. The record remained open until close of business on October 6, 2015, to allow the Applicant to submit additional supporting documentation. Applicant

submitted one Post-Hearing Exhibit, which was admitted without objection. The transcript of the hearing (Tr.) was received on September 23, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **FINDINGS OF FACT**

Applicant is 64 years old and married with children. She has an Associate's degree from a community college. She holds the position of Truck Driver for a defense contractor. She 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 all of the allegations set forth in the SOR, except 1(a)., under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated May 13, 2014; November 14, 2014; July 1, 2015; and September 24, 2015, reflect that at one time Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$29,000. (Government Exhibits 3, 4, 5 and 6.) Applicant began working for her current employer in April 2014. She is currently on a leave of absence pending this decision.

The Government alleges that a Federal tax lien was entered against the Applicant in 2008 in the amount of approximately \$28,927. Applicant contends that this is a mistake, and that there is no valid federal tax lien against her or her properties. She notes that the social security numbers are wrong, and so are the middle initials of the parties. Applicant adds that she has always filed her income tax returns and paid her taxes. Applicant contacted the Internal Revenue Service (IRS) and they actively researched the matter. According to the documentation from the IRS, it was determined that the lien in question is not the Applicant's lien. (Applicant's Exhibit A, and Applicant's Post-Hearing Exhibit)

Applicant explained that she owned three separate houses, consisting of a primary residence and two rentals. Each house had a first and second mortgage. Applicant claims that the second mortgages were held by a predatory lender and were adjusting above what she could afford. To avoid losing the properties, Applicant sought out legal counsel, who advised her to file for Bankruptcy, placing each of the properties into Bankruptcy. Applicant filed for Chapter 13 Bankruptcy in November 2009. She dismissed the Bankruptcy in January 2010. She filed for Chapter 13 again

in February 2010 and dismissed it in March 2010. She filed for Chapter 7 Bankruptcy in April 2012. Her debts were discharged in August 2012. Applicant's attorney did not file a reaffirmation on the houses. Applicant continued to make the mortgage payments throughout the process in a timely manner. The lienholder took no action against the Applicant. (Applicant's Exhibit D.) Applicant continues to own the houses. She is now comfortably able to afford each of the mortgages on the three properties. She has active renters in the two rentals and she resides in her primary resident. She now has conventional first trust deeds on each house and no second mortgages.

A state tax lien was entered against the Applicant in 2011 in the amount of \$114. Applicant submitted a Release of Lien dated April 16, 2015. (Applicant's Exhibit B.)

A delinquent medical account was placed for collection in the amount of \$71. Applicant paid the debt in full. A letter from the creditor dated April 16, 2015, regarding the account shows a zero balance. (Applicant's Exhibit C.)

Applicant has no delinquent debts and is current with all of her regular monthly living expenses. She owns three houses, with equity in each one, and has about \$3,000 in savings for emergencies. She has no other retirement accounts. She has never had any problems at work for violating security policy or regulation or doing something inappropriate. (Tr. p. 37.) She understands that she must be fiscally responsible and live within her means at all times while holding a security clearance. (Tr. p. 43.)

## **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 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 her security clearance eligibility.

The evidence shows that the large Federal tax lien alleged in allegation 1.a. of the SOR is not the Applicant’s lien, but a mistake on the part of the IRS. The two other small debts she has paid off and provided proof of payment. She explained that she filed multiple bankruptcies, upon the advice of her attorney, in order to protect her properties from foreclosure, which proved to be successful for her. She is current with all of her regular monthly expenses and has no delinquent debts. Under the circumstances, Applicant made a good-faith effort to resolve her debts. She understands that she must remain fiscally responsible if she is to hold a security clearance. Furthermore, she has not incurred any new debt that she cannot afford to

pay. There is clear evidence of financial rehabilitation. 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 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 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. It mitigates the negative effects of her financial indebtedness and the effects that it can have on her ability to safeguard classified information. On balance, it is concluded that the Applicant has overcome the Government's case opposing her 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 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.

## **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