



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



In the matter of:	)	
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	)	ISCR Case No. 12-06963
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace L. Garcia, 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 her Electronic Questionnaires for Investigations Processing (e-QIP) on March 2, 2012. (Government Exhibit 2.) On May 19, 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 Applicant, which detailed reasons why DOHA 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 June 18, 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 September 11, 2015. Applicant received the FORM on September 17, 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 January 19, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

## FINDINGS OF FACT

Applicant is 44 years old and is married with two biological children and one step child. She has a bachelor's degree in mathematics and holds the position of Engineering Supervisor for a defense contractor. She 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 admits to each of the four allegations set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Credit Reports of Applicant dated March 16, 2012, and December 12, 2014, reflect that at one time Applicant was indebted to each of the creditors set forth in the SOR in an amount totaling in excess of approximately \$172,000, most of which was for a delinquent mortgage. (Government Exhibits 5 and 6). Applicant began working for her current employer in January 2002. She was granted a security clearance in 1995 and again shortly after starting her employment in 2002.

Applicant attributes her delinquent debts to the fact that in 2004 her husband, who had been employed, started having medical problems. At some point, he had to stop working and started collecting disability. This significantly reduced the household income. In 2009, she and her husband separated, which caused an additional financial burden. Although Applicant has a rental property; her daughter is currently living in it with her family, and is not able to pay rent.

In 2005, Applicant had purchased a house during the housing bubble. She believes the house was overpriced for its condition and location, and was in need of significant repairs. She claims that the utility bills ranged from \$1,300 to \$1,500 monthly and the sewer pipes were defective which released harmful chemicals daily. She states that her family's health was being adversely affected. She continued to make the payments until she could no longer do so. In August 2009, Applicant's house went into foreclosure.

1.a. Applicant became indebted to a mortgage lender on a mortgage account that was past due in the approximate amount of \$64,266. The house was in foreclosure status with a total loan balance of \$171,867. Applicant explained that the house has now been sold. She contacted the lender and was told that there is no deficiency balance owed. (Applicant's Exhibit A, enclosure 1.)

1.b. Applicant is indebted to a creditor for an account that has been charged off in the approximate amount of \$512. Applicant states that she paid \$205.11, and

thought the matter was settled. She contacted the creditor and was told that she still owed \$307.66. She paid \$100 toward the debt on October 5, 2015, and plans to continue to pay off the remaining balance soon. (Applicant's Exhibit A, enclosure 2.)

1.c. Applicant is indebted for a delinquent medical account in the approximate amount of \$166. Applicant paid off the account in October 2015. (Applicant's Exhibit A, enclosure 3.)

1.d. Applicant is indebted for a delinquent medical account in the approximate amount of \$57. Applicant paid off the debt in October 2015. (Applicant's Exhibit A, enclosure 3.)

Applicant stated that to avoid any future problems of this sort, she and everyone in the her house will take budgeting classes to learn how to properly live within their means. She also plans to contact all of her creditors to provide a mitigation plan to pay all of her delinquent creditors. She plans to pull her credit report on a yearly basis to ensure adequate reporting and review accuracy of information. She and her husband are currently seeking marital counseling on the area of communications, and shared responsibilities regarding their finances. Her husband is currently being treated for Adult ADHD or ADD. Applicant believes that this will assist in some of the organizational skill problems in the home that have contributed to some financial problems.

Applicant submitted documentation showing that she is currently receiving financial counseling. (Applicant's Exhibit A, enclosure 4.) She states that she is also receiving individual and family counseling that she believes will help avoid any future financial problems.

## **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 that 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 a 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 her security clearance eligibility.

The evidence shows that unexpected circumstances caused Applicant financial problems. She became delinquently indebted only when her husband got sick and had to stop working. Although he received disability, it was not enough to support their lifestyle, which was not lavish by any means. His disability benefits and her salary were not enough to afford to pay their mortgage. As a result, their home was foreclosed

upon. Several other bills fell between the cracks. When Applicant's daughter moved into their rental property with her family and could not afford to pay rent, this only compounded the problem.

Since incurring the delinquent debt set forth in the SOR, Applicant has contacted the creditors and resolved the debt. Applicant's home that was foreclosed upon was sold by the bank, and there is no deficiency balance owed. In regard to her other delinquent debts, she has either paid them off in full or is in the process of doing so. She has demonstrated a good-faith effort to resolve her past-due indebtedness. She understands that she must remain financially responsible if she is to hold a security clearance. She is currently receiving financial counseling to avoid any future problem. There is clear evidence of financial rehabilitation. However, in the event that she becomes delinquent on her debts again, her security clearance will be in immediate jeopardy. 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, 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. Unexpected circumstances caused Applicant's indebtedness. She has shown good judgment and worked hard to resolve her debt. 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, 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 that her financial indebtedness can have on her ability to safeguard classified information. On balance, it is concluded that Applicant has overcome the Government's case opposing her 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 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.

## **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