



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 12-11683  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Department Counsel  
For Applicant: *Pro se*

June 27, 2014

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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) on May 2, 2007. (Government Exhibit 1.) On February 19, 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) detailing the security concerns under Guideline F for Applicant. The SOR set forth the reasons why DoD adjudicators 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 on March 10, 2014, and he requested a hearing before an administrative judge. This case was assigned to the undersigned on April 28, 2014. A notice of hearing was issued on April 29, 2014, and the hearing was scheduled for May 15, 2014. At the hearing the Government presented eight exhibits, referred to as Government Exhibits 1 through 8, which were admitted without objection. Applicant presented no exhibits, however he testified on his own behalf. The record remained open until close of business on May 30, 2014, to allow Applicant to submit additional documentation. Applicant submitted twenty-four Post-Hearing Exhibits, referred to as

Applicant's Post-Hearing Exhibits 1 through 24, which were admitted without objection. The official transcript (Tr.) was received on May 27, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **FINDINGS OF FACT**

Applicant is 51 years old and married with two children. He has a Master's Degree in Criminal Justice and is an active student in a Ph.D program. He is employed with a defense contractor as a Private Investigator 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 denied allegations 1.a., 1.b., 1.h., and 1.j., and admitted and denied in part the remaining allegations set forth in 1.c., 1.d., 1.e., 1.f., 1.g., and 1.i., in the SOR under this guideline. Credit Reports concerning Applicant dated May 26, 2007; June 8, 2012; November 5, 2013; and May 8, 2014 reflect that Applicant was at one time excessively indebted to the creditors set forth in the SOR totaling approximately \$70,000. (Government Exhibits 2, 4, 5 and 8.)

Applicant served on active duty in the United States Air Force from February 1983 until April 1987 when he was honorably discharged. During his military career, he held a security clearance without incident.

Between 1997 and 2013, Applicant encountered a number of unexpected events that prevented him from being able to pay his delinquent debts in a timely fashion. To begin with, in 1997, after ten years working for a county Sheriff's department, Applicant was injured on the job, and forced to retire. He receives only 50% of his pay as a retirement benefit. (Applicant's Post-Hearing Exhibit 12.) When he retired, it took sometime before Applicant was employable again. In fact, he was completely unemployed for about two years. During that period, he stayed at home and took care of his children, while his wife worked full time. Applicant testified that it was about this time that he began to have financial problems. As time passed, his debts increased, but his income did not. At some point, his wife, who had been working full time, decided to cut back her hours in order to stay home with the children. Since then the Applicant has been the primary financial support for the family.

In 2003, Applicant became a licensed private investigator and started working as a Federal Contract Investigator. At that time, he applied for the security clearance that he now seeks to maintain. He was contracted with the post office until 2009 or 2010, and then obtained a contract with his current employer. Much of his work is only part-time, and his income did not cover all of his family expenses.

In 2010, Applicant suffered a heart attack and underwent surgery to have a stent put in. From June 2012 through November 2012 Applicant earned no income as a contract investigator due to the sequester. He then took on some odd jobs working part-time. In July 2013, Applicant was diagnosed with testicular cancer. He underwent surgery followed by chemotherapy, and it took about six months to recover. He testified that he still has residual effects from the chemotherapy. (Tr. pp. 50-51, and Applicant's Post-Hearing Exhibit 19.) Applicant's income during this time fluctuated drastically based upon his illnesses and the availability of work.

Applicant stated that on occasion he has felt a little overwhelmed due to his health issues, and because of that, he failed to notify his creditors when he started falling behind. By January 2014, Applicant's delinquent debts were completely unmanageable. He hired a financial advisor to assist him with his finances. After evaluating his financial situation, she advised him to file for bankruptcy protection. (Tr. P. 78.) Applicant took her advise and on January 27, 2014, he filed for Chapter 7 bankruptcy to discharge all of his lingering old debt. (Applicant's Post-Hearings Exhibit 1 through 8.)

Several debts that were not able to be discharged in the bankruptcy remain outstanding. Applicant and his financial advisor are currently working to resolve the remaining delinquent debts.

1.a., and 1.b. In regard to his Federal and State income tax returns for tax year 2012, Applicant contends that he filed an extension that allowed him to file his income tax returns after the due date. He then filed the returns before the extension deadline. (Tr. pp. 34-36.) Applicant provided copies of his filed Federal and State income tax returns for tax year 2012. (Applicant's Post-Hearing Exhibit 16.) Both returns indicate that he has no tax liability for that year.

1.c. Applicant originally owed \$15,000 in back taxes for tax year 2007 to the Internal Revenue Service. He has since set up a payment plan that he is following. He has reduced the debt to about \$4,000. According to the agreement, he pays \$150 monthly to the creditor and plans to continue to do so until the debt is paid in full. (Applicant's Post-Hearing Exhibit 20.)

1.d. Applicant owes \$4,000 to a county in unpaid property taxes. He explained that he has been in negotiations concerning how to pay the debt and was advised to wait until June 20, 2014, which would allow him to file for the five-year-repayment plan. This requires that he come up with 20% of the \$7,500 that he will then owe, and then pay off the rest over five years. (Applicant's Post-Hearing Exhibit 21, and Tr. p. 65.) Applicant

plans to set up the payment plan and pay off the debt as soon as possible. (See Applicant's Answer to SOR.)

1.e. Applicant explained that this debt owed to a bank for a delinquent credit card in the amount of \$3,212 was discharged in the bankruptcy. (Tr. p. 70. and Applicant's Exhibits 1 through 8.)

1.f. Applicant is indebted to a bank for a second on his home loan in the amount of \$7,850. He is presently in negotiations to resolve the debt, and plans to resolve it as soon as possible. (See Applicant's Answer to SOR.)

1.g. and 1.i. set forth in the SOR are one in the same. Applicant is indebted to a bank for a home equity line of credit in the amount of \$40,000. He is presently in negotiations to resolve the debt, and plans to resolve it as soon as possible. (See Applicant's Answer to SOR.)

1.h. Applicant explained that this debt owed to a cellular telephone company in the amount of \$276 was discharged in the bankruptcy. (Tr. p. 80, and Applicant's Exhibits 1 through 8.)

1.j. Applicant was indebted to a mortgage company for an account that was 120 days past due in the approximate amount of \$2,412 with a balance of \$409,397.00. Applicant explained that he has since brought his mortgage current and it is in good standing. (Tr. pp. 79-80, and Applicant's Post-Hearing Exhibit 14.)

After careful consideration, Applicant has decided it best to sell his home to eliminate and avoid any further delinquent debts. This will allow him to eliminate outstanding delinquent debt that include banknotes, educational loans, Federal and State taxes and outstanding property taxes. The sale of his home will not only allow him to pay off all of his debt, but he will still have approximately \$100,000 in equity for a future investment. Applicant indicates that he has just hired a realtor who will be placing his home up for sale within the week. (Applicant's Post-Hearing Exhibits 14 and 15.)

Applicant's personal financial statement indicates that together with his salary from work and his retirement benefit, he earns between \$60,000 and \$70,000 annually. His wife earns about \$16,000. (Applicant's Post-Hearing Exhibits 13, 18 and Tr. p. 56.) He has paid off his vehicle and no longer has that payment. (Applicant's Post-Hearing Exhibit 23.)

Letters of recommendation from two neighbors of the Applicant indicate that they believe he is a hardworking man of high integrity. Among other favorable attributes, he is always willing to help those in need. They consider him to have good judgment, and be reliable and trustworthy. They recommend him for a security clearance. (Applicant's Exhibit 20.)

Applicant is currently completing an online doctoral program to obtain a degree in psychology. He plans to become a licensed psychologist and work for the Veteran's Administration helping wounded veterans or to establish a private practice in his retirement years.

## **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 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 which 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 possible 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 shows that circumstances largely beyond Applicant's control contributed to his financial problems. After suffering an injury on the job that required that he retire, he had no employment for several years. When he did find work, he suffered a series of very serious health issues that continued to hold him back from working full time on a consistent basis. During this time, his delinquent debts accumulated. In 2013/2014, in a serious effort to resolve his delinquent debt, Applicant hired a financial advisor to evaluate his financial situation and advise him in the best light. Applicant followed her advice to file bankruptcy to discharge many of his delinquent debts. He is currently working to resolve those few debts that remain outstanding. He has filed his Federal and State income tax returns and is paying his back taxes. He has been slowly climbing out of debt.

In order to resolve his remaining debt more quickly, Applicant has recently decided to sell his home which will completely resolve all of his financial problems. This will allow him to finally reach a financial position where he can remain current on all of his debts and begin saving for the future. He has already hired a realtor and is in the process of placing his home up for sale.

Over the past year, Applicant has been working hard to resolve his indebtedness and has been following a strict financial budget that he is comfortably living on. Applicant has made a good-faith effort to resolve his debts and has acted responsibly under the circumstances. He has a plan that he is following to resolve his debt. Although it is a drastic step to place his home up for sale in order to resolve his debts sooner, he has chosen to do it to show how serious he is to resolve his debts once and for all. He realizes the importance of handling his finances in a responsible manner. In addition, he has either paid off the debt or has set up a payment plan that he is following to resolve the debt.

Applicant has made permanent financial changes to his lifestyle that show that he can live within his financial means without accumulating excessive debt. He understands that he must remain fiscally responsible at all times if he is to hold a security clearance. Given the circumstances, he has demonstrated that he can properly

handle his financial affairs. There is strong evidence of financial rehabilitation. 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. 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, 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, including the favorable letters for recommendation and his favorable work history. They mitigate the negative effects of his 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 Applicant on the allegations in the SOR, as required by Paragraph E3.1.25 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.  
Subpara. 1.i.: For Applicant.  
Subpara. 1.j.: 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