



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 12-12051  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Department Counsel  
For Applicant: *Pro se*

February 2, 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) on June 8, 2012. (Government Exhibit 1.) On June 30, 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 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 on June 30, and August 6, 2015, and he requested a hearing before a Defense Office of Hearings and Appeals Administrative Judge. This case was assigned to this Administrative Judge on October 13, 2015. A notice of hearing was issued on November 5, 2015, scheduling the hearing for November 19, 2015. At the hearing the Government presented five exhibits, referred to as Government Exhibit 1 through 5, which were admitted without objection. Applicant presented no exhibits. He testified on his own behalf. The record remained open until close of business on November 27, 2015, to allow Applicant to submit additional supporting documentation. Applicant did not submit any documentation. The official

transcript (Tr.) was received on December 1, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## FINDINGS OF FACT

Applicant is 50 years old, and married. He has a high school diploma and served 20 years in the military with various technical schools. He is employed with a defense contractor as a Maintenance Technician 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 admits each of the allegations set forth in the SOR under this guideline. Credit Reports of the Applicant dated July 7, 2012; December 11, 2014; and September 30, 2015; reflect that Applicant is indebted to three separate creditors in an amount totaling in excess of \$72,000. (Government Exhibits 2, 3 and 4.)

Applicant served on active duty in the United States Navy from 1984 until he retired in October 2004. In August 2005, he started working for his current civilian employer. He held a security clearance throughout his entire military career and during his current employment without incident.

Applicant fell behind on his bills, and accumulated debt that he did not pay. (See Answer to SOR.) According to his credit reports, the following three debts remain outstanding: 1.(a), a delinquent credit card debt that was placed for collection in the approximate amount of \$37,753 remains outstanding. Applicant testified that he believes the original amount of the debt was \$10,000, but over time, the debt increased to around \$30,000. He thought that he had paid it off, but that it must have fallen through the cracks. He further explained, in his June 2015 SOR response, that he planned to cash out his 401(k) by the end of September 2015 and pay off the debt. He offered no evidence during or after his hearing of any payments. (Tr. pp. 22-33.) 1.(b), a delinquent credit card debt in the amount of \$10,491 remains outstanding. Although Applicant admitted the debt in his answer to the SOR, he testified now that he does not believe that it is his debt. He did not dispute the debt, nor did he do anything to verify whether he still owed the debt. (Tr. p. 36.) 1.(c), a delinquent debt owed to a creditor that was placed into collection in the amount of \$24,166 remains outstanding. Applicant believes that this debt pertains to the debt set forth in 1.a. (Tr. p. 37.) Applicant had no

definite answers with respect to any of the delinquent debts. He was not sure about them because he had not contacted the creditors to find out.

It appears from Applicant's most recent credit report, dated September 30, 2015, that each of these delinquent debts, over the course of time, have fallen off of his credit report. (Government Exhibit 4.)

Applicant has failed to submit any evidence to show that he does not owe the debts. He did not contact the creditors, nor did he start making payments toward his debts, or resolve them. He has not produced a receipt or statement from a creditor confirming that any of his debt has been paid, or a settlement reached, a cancelled check, or a new credit bureau report showing final payment.

Applicant states that his intention is to pay off his delinquent debt. (Answer to SOR.) He also plans to contact his creditors to work something out. (Tr. p. 46.) He has provided no documentary evidence showing that he has contacted his creditors about his situation, nor is there any evidence demonstrating that he has paid off anything, or that he has made any payments to reduce his debt or even that he has set up a payment plan.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant denies the allegation set forth in the SOR under this guideline. Applicant completed an Electronic Questionnaire for Investigations Processing, (a security clearance application), dated June 8, 2012, and answered, "NO," to a series of questions concerning his finances. (Government Exhibit 1.) Section 26 asked, "In the past seven years, have you had any possessions or property voluntarily or involuntarily repossessed or foreclosed? Has he defaulted on any type of loan? . . . Had he had bills or debts turned over to a collection agency? . . . Had he had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? . . . had he been over 120 days delinquent on any debt not previously entered? . . . Is he currently over 120 days delinquent on any debt?" Applicant answered the questions falsely and failed to list the delinquent debts set forth in the SOR. (See Applicant's Answer to SOR.)

Applicant claims that at the time he completed the security clearance application in 2012, he was unaware of the delinquent debts on his credit report. Whether the three debts are actually one debt owed to the same creditor, or whether the three debts remain owing to separate creditors, Applicant has not made a good faith effort to resolve his debts. The record evidence shows that Applicant should have at the very least disclosed one delinquent credit card debt. He disclosed nothing, and denied having such debts by responding, "No," to the questions. Applicant is extremely familiar

with the questionnaire and has been completing it for over 30 years now. The questions on the application are not complicated or complex. Applicant knew or should have known to answer the questions truthfully and candidly, which he did not.

## **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 obligation.

#### Conditions that could mitigate security concerns:

None.

### Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

#### Conditions that could raise a security concern:

16.(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Conditions that could mitigate security concerns:

None.

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 that 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 and dishonesty or conduct 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.

Furthermore, the Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F) and dishonest on his security clearance application (Guideline E). The evidence indicates poor judgment, unreliability, and untrustworthiness on the part of the Applicant. Because of the scope and nature of Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

In regard to his personal conduct, Applicant was not truthful and candid with the Government on his security clearance application when he intentionally omitted relevant information concerning his finances. At the time he completed the application in 2012, he knew or should have known that he had a number of delinquent debts. The only reasonable conclusion for not revealing the truth concerning his delinquent debts was that he did not want the Government to know about them. There is no excuse for this misconduct. I find that he deliberately concealed the information from the Government on the application.

Under Guideline E (Personal Conduct), Disqualifying Condition 16.(a) *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* apply. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

Turning to his financial indebtedness, Applicant has not resolved his delinquent debts. Even after receiving the SOR, he did not contact the creditors in question to inquire about the debts. He testified that he does not believe that they are all his debts, and that they may have originated from one debt. However, he did not dispute these debts or do anything to find out whether they are in fact his debts. At the very least, Applicant should have inquired to find out the particulars regarding the debts. Instead, he ignored the situation. This is an indication of irresponsibility that demonstrates to the Government that Applicant cannot be trusted with the national secrets. Presently, Applicant remains excessively indebted.

Since Applicant has not started the process of resolving his debts, he must show that he can and will resolve his debts. At this time, there is insufficient evidence of financial rehabilitation. Applicant has not demonstrated that he can properly handle his financial affairs. Applicant has not met his burden of proving that he is worthy of a security clearance. In the event that he resolves his debts and does not incur any further delinquencies, he may be eligible for a security clearance in the future. However, not at this time. Considering all of the evidence, the 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. None of the mitigating conditions are applicable. Applicant has failed to show that he has acted responsibly, and his delinquent debts have not been addressed. Accordingly, I find against 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 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 financial indebtedness and his personal conduct, and the effects they can have on his ability to safeguard classified information. On balance, it is concluded that the Applicant has not overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 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.
Paragraph 2:	Against the Applicant.
Subpara. 2.a.	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. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge