



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 13-01344  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Pamela Benson, Department Counsel  
For Applicant: *Pro se*

February 9, 2015

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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 August 21, 2013. (Government Exhibit 5.) On March 12, 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) to the 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 the 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 a date uncertain, 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 22, 2014. Applicant received the FORM on September 25, 2014. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant failed to submit a response to the FORM. This case was assigned to the undersigned on November 20, 2014. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

## FINDINGS OF FACT

The Applicant is 44 years old, and married with one daughter. He is employed with a defense contractor as an HVAC Technician and 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.

The Applicant admitted each of the allegations set forth in the SOR under this guideline. Applicant's credit report dated September 10, 2013, reflects that the Applicant is indebted to each of the creditors set forth in the SOR in an amount totaling approximately \$20,633. (Government Exhibit 9.) Applicant has been working for his current employer since November 2012.

Applicant did not provide any explanations as to how or why he became delinquently indebted. His credit report confirms that in 2005 he filed for Chapter 7 Bankruptcy. At that time his delinquent debts were discharged.

Since then, Applicant has continued to have financial problems. Eleven delinquent debts that were either charged-off or placed for collection remain outstanding. 1.(b) A state tax lien was entered against him in August 2012, in the approximate amount of \$605; 1.(c) A state tax lien was entered against him in June 2012, in the approximate amount of \$211; 1.(d) a judgment filed against him in August 2009, in the approximate amount of \$4,602; 1.(e) a judgment filed against him in March 2009, in the approximate amount of \$3,580; 1.(f) a charged-off auto account in the amount of \$7,427; 1.(g) a charged-off account in the approximate amount of \$450; 1.(h) a charged-off account in the approximate amount of \$431; 1.(i) a collection account in the approximate amount of \$1,446; 1.(j) a collection account in the approximate amount of \$1,177; 1.(k) a collection account in the amount of \$603; and, 1.(l) a collection account in the approximate amount of \$101.

There is no evidence of any payments being made or payment plans set up to resolve any of the outstanding debts. When Applicant was questioned about the debts during his background investigation by an investigator, he stated that he had no knowledge of most of the debts, but that he would be contacting the creditors to determine their status. There is no further information in the record.

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 admitted the allegations set forth in the SOR under this guideline. Applicant completed a security clearance application dated August 21, 2013, and answered, "NO," to a series of questions concerning his finances. (Government Exhibit 5.) Question 26 of the application asked the Applicant if in the last 7 years had he filed a petition under any chapter of the bankruptcy code. Applicant answered, "NO." He failed to admit that he had filed for Chapter 7 bankruptcy in 2005. Applicant filed his Chapter 7 bankruptcy outside of the 7 years and therefore he was not required to disclose it. Accordingly, this subparagraph is found for the Applicant.

Applicant was also asked, in Question 26 of the application, if in the last seven years, had he had bills or debts turned over to a collection agency? If in the last seven years had he had a credit card suspended, charged-off, or cancelled for failing to pay as agreed. If in the past seven years he been over 120 days delinquent on any debt not previously entered. Is he 120 days delinquent on any debts? The Applicant answered, "NO," to each of the questions. (Government Exhibit 5.) These were false responses. He failed to list the delinquent debts set forth in the SOR. (See Applicant's Answer to SOR.)

On the same application, there were questions about his police record. Question 22 asked him if in the last seven years had he been issued a summons, citation or ticket to appear in court in a criminal proceeding against him. Applicant was asked if in the last seven years, had he been charged, convicted or sentenced for a crime in any court. He was also asked if he has ever been charged with an offense involving alcohol or drugs. The Applicant answered, "NO," to each of the questions. (Government Exhibit 5.) These were false responses. Applicant failed to list his arrest and conviction for Illegal Processing of Drug Documents in May 2007. (See Government Exhibits 5, 7 and 8.) On this occasion, Applicant was pulled over by the police for running a red light. The police officer found a doctor's prescription pad laying on the work truck's dashboard. Applicant had multiple doctor's prescription pads in his truck. He claimed that they were given to him by a foreman from an abandoned doctor's office work site. Applicant was subsequently arrested and charged with Illegal Processing of Drug Documents. He was found guilty of the charge and was sentenced to 30 days in jail plus a fine of \$310. (Government Exhibit 8.)

Applicant was interviewed by an authorized investigator of the Department of Defense on October 16, 2013. During the interview, Applicant denied having been arrested, charged or convicted of any criminal offense, nor being required to attend a criminal court proceeding in the last seven years. After being confronted with his conviction, Applicant provided further false information by stating that he was never

charged with any offense, and that the judge at his hearing decided not to charge him with any criminal offense. This was a false response. In 2007, the Applicant was in fact charged with Illegal Processing of Drug Documents, he pled guilty and was convicted. (Government Exhibits 7 and 8.)

During that same interview with the authorized investigator of the Department of Defense, Applicant deliberately falsified material facts when he denied having any tax liens, accounts placed for collection, accounts charged off, or any accounts over 120 days delinquent, when in fact he had both tax liens and delinquent accounts as set forth above.

Applicant failed to provide any explanation as to why he did not provide the truth in response to these questions. It can only be assumed that he deliberately attempted to falsify the application and sought to conceal the information from the Government. Furthermore, there is no evidence in the record that demonstrates that his financial problems are being resolved or are under control. In the absence of additional documentary evidence submitted in response to this FORM to show that Applicant has been able to begin to regain some financial stability by establishing a meaningful track record of resolving his delinquent debts, this concern must be decided against him in evaluation of his suitability to have access to classified information.

## **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:

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 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; and

16.(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

### 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, 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 and dishonesty or conduct that 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 regard to his personal conduct, given his history of criminal conduct, dishonesty on the security clearance application, and untruthfulness during an interview with an investigator, the Applicant cannot be found trustworthy. He intentionally or deliberately falsified his security clearance application or sought to conceal his financial history from the Government. He knew or should have known that he must be truthful in

answering questions on the application and in providing information to the Government about his background during his security clearance investigation. Since he was not truthful on the application in response to questions about his finances, his police record, and during an interview with an investigator, the only reasonable conclusion is that he deliberately sought to conceal the information from the Government.

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;* and 16.(b) *deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative* apply. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

Furthermore, the Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F). The 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.

There is a history of financial indebtedness that has not been mitigated. Applicant must show that he can and will resolve his debts. In this case, there is no evidence that he can do so. He has not shown an ability to pay any of his delinquent debts or live within his means. 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. 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. Applicant has failed to provide any information as to why he is delinquently indebted. There is no evidence in the record to show that he has even started the process of resolving his debts. The record is void as to any evidence in mitigation. Based upon the evidence in the record, he has a long way to go to demonstrate that he is fiscally responsible.

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. 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 it 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.
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.
Subpara. 1.i.	Against the Applicant.
Subpara. 1.j.	Against the Applicant.
Subpara. 1.k.	Against the Applicant.
Subpara. 1.l.	Against the Applicant.
Paragraph 2:	Against the Applicant.
Subpara. 2.a.	For the Applicant.
Subpara. 2.b.	Against the Applicant.
Subpara. 2.c.	Against the Applicant.
Subpara. 2.d.	Against the Applicant.
Subpara. 2.e.	Against the Applicant.
Subpara. 2.f.	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