



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



In the matter of: )  
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----- ) ISCR Case No. 14-00913  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Department Counsel  
For Applicant: Ryan C. Nerney, Attorney At Law, The Edmunds Law Firm

November 7, 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 January 20, 2012. (Government Exhibit 1.) On April 26, 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 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 responded to the SOR on July 21, 2014, and he requested an administrative hearing before a Defense Office of Hearings and Appeals (DOHA) Administrative Judge. This case was assigned to the undersigned Administrative Judge on September 2, 2014. A notice of hearing was issued on September 10, 2014, and the hearing was scheduled for October 2, 2014. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant presented eleven exhibits, referred to as Applicant's Exhibits A through K, which were also admitted into evidence without objection. He also testified on his own behalf. The official transcript

(Tr.) was received on October 14, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **FINDINGS OF FACT**

Applicant is 55 years old and married. He has a Master's Degree. He holds the position of Senior Logistics Analyst for a defense contractor. He 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 the allegation set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated March 30, 2006; February 2, 2013; February 7, 2014; and August 26, 2014, reflect that at one time Applicant was indebted to the creditor set forth in the SOR, in an amount totaling approximately \$25,000. (Government Exhibits 3, 4, 5 and 6.)

Applicant joined the United States Air Force in 1977, and served honorably for 26 years, before he retired in 2003, as a senior master sergeant. During his military career he received numerous awards, decorations and commendations for his outstanding service. (Applicant's Exhibits I and K, and Tr. p. 38.) Applicant was never subject to any military discipline, nor did he ever violate any Air Force rules or regulations. (Tr. p. 54.) Furthermore, he never financially over-extended himself while in the military. The day after he retired from the military, he began working for his current employer, in December 2002. Applicant has held a security clearance for almost 37 years without incident. (Tr. p. 37.)

Applicant has a history of being financially responsible and paying his bills on time. He has always filed his income tax returns in a timely fashion. In October 2011, he became indebted to the Internal Revenue Service (IRS) for a tax lien filed against him in the amount of \$24,473. Applicant explained that in 2006, the interest rate on his mortgage loan ballooned, at the same time his grandson was born and came to live with him. Since then, Applicant has provided for all of his grandson's care and financial support. Applicant's daughter gave the Applicant Power of Attorney for purposes of taking care of her son. With that, since he provided all of his financial support, it was Applicant's understanding that he would claim his grandson as a dependent for income tax purposes. Applicant later learned that his daughter was going to claim his grandson, and so he did not do it. Not prepared for this situation, Applicant did not have enough income taxes deducted during the year to satisfy the

taxes he was required to pay. Although he was deducting the correct amount of taxes from his check, his wife was not. His wife, who worked for the Air Force Base had more being deducted from her Social Security than was being deducted from her federal taxes. To remedy the problem, Applicant has readjusted his withholdings, and currently reduced his deductions down to zero. (Tr. p. 44.)

Applicant also set up a payment plan, through automatic payroll deductions, that was paying the back taxes he owed for 2006. In 2008, when he refiled his income tax returns and was eligible for a refund, the automatic deduction was cancelled without his knowledge. By the time he submitted the documentation to reinstate the payment plan, the lien procedures were already in place. In 2010, when Applicant learned of the error, he reinstated the payment plan and has been current with this payments since then. Applicant's final payment made to the IRS to satisfy the tax lien was on July 15, 2014, for tax year 2009. (Applicant's Exhibit A.) The lien was released in August 2014. (Applicant's Exhibit C.)

At one point, Applicant's tax liability had grown to \$48,000. He has reduced it significantly over the past years, and he currently owes the IRS about \$12,000 in remaining back taxes. He explained that since he was not withholding enough taxes, the situation spiraled, and as he paid off one tax year, another tax bill came due. He was also stuck with interest and penalties. (Tr. p. 59.) He is now current with his installment payments to the IRS. His monthly installment payment is \$1,500. He has set up a plan to satisfy all of his debts and manage his financial obligations without difficulty. His financial budget will now allow him to satisfy his debt and be debt free in six months. (Tr. p. 53.) Since 2010, he has been claiming his grandson as a dependent. Applicant is now looking into seeking legal custody of his grandson.

Applicant's personal financial statement dated March 7, 2014, indicates that collectively, he and his wife currently earn almost \$15,000 monthly. After paying all of his regular monthly expenses, including credit cards and other miscellaneous bills, Applicant has about \$2,000 in discretionary funds left at the end of the month. His monthly income combined with his wife's comfortably meet all of their financial needs. (Government Exhibit 2.)

Applicant's job performance evaluation for the period from September 2013 through September 2014 reflects "as expected", "better than expected" or "outstanding" ratings in every category. (Applicant's Exhibit H.)

Letters of recommendation from professional associates of the Applicant, including the Facility Security Officer, a Vice President and Director, a Senior Analyst, a Program Manager, and a retired Air Force major, indicate that Applicant is an outstanding employee, proven leader, skilled analyst, with excellent moral character and integrity. He has a proven ability to work without incident on 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:

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, 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 adjudication 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, 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 his security clearance eligibility.

The evidence shows that the Applicant's tax problems started in 2006 when he did not have enough income taxes deducted from his earnings during the tax year. As a result, he was not prepared for the back taxes that were assessed. This caused him to become delinquently indebted to the IRS for back taxes, and the problem spiraled over the years. All along, however, Applicant has shown good judgment and reliability. When he first learned of his tax problems, he immediately adjusted his withholdings, set up a payment plan through automatic deductions and began paying the debt. Since then, he has completely resolved the debt listed in the SOR, and the lien has been released. He is still following an IRS-approved payment plan he set up to resolve his remaining back taxes, and he will be debt free in six months.

Under the circumstances, Applicant is making a good-faith effort to resolve his debts. He understands that he must remain fiscally responsible if he is to hold a security clearance. He has not incurred any new debt that he cannot afford to pay, and he has no other delinquent debts. There is clear evidence of financial rehabilitation. However, in the event that he cannot meet his financial obligations, or if he does not completely resolve his current outstanding debt, his security clearance will be immediately in jeopardy. 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.(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 judgment, 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 Applicant's military service. It mitigates 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 the Applicant has overcome the Government's case opposing his

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 E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.  
Subpara. 1.a.: For the 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