



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



In the matter of: )  
 )  
----- ) ISCR Case No. 15-01258  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Benjamin R. Dorsey, Department Counsel  
For Applicant: *Pro se*

June 2, 2016

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on July 12, 2012. (Government Exhibit 3.) On August 24, 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 the 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 in writing on September 1, 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 November 3, 2015. Applicant received the FORM on November 12, 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 Exhibits A and B. This case was assigned to the undersigned on January 5, 2016. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

Applicant is 55 years old, and married with three adult children. She has a high school diploma. She is employed with a defense contractor as a Shipping Clerk 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 she is financially overextended and at risk of having to engage in illegal acts to generate funds.

There are seven delinquent debts set forth in the SOR totaling approximately \$27,000, most of which is comprised of a \$24,483 Federal tax lien. Applicant also filed a Chapter 13 and a Chapter 7 Bankruptcy in 2008, which were both dismissed prior to discharge. Applicant admitted each of the allegations with some explanations under this guideline. Credit reports of Applicant dated July 21, 2012, and January 23, 2015, which include information from all three credit reporting agencies, indicate that Applicant is indebted to each of the creditors listed in the SOR. (Government Exhibits 5 and 6.) Applicant has been employed with her current employer since July 2012. She has never held a security clearance. (Government Exhibit 3.)

Applicant explained that prior to 2004/2005, she was a stay-at-home mother for her three children while her husband ran a successful roofing company. In 2007/2008, the housing market crashed and their income plummeted. They sold off some of their belongings like their boat and her jewelry to try to keep up. In January 2008, Applicant filed for Chapter 13 Bankruptcy in an effort to keep from losing their home to foreclosure, as their attorney had advised. They later changed the petition to a Chapter 7 in September 2008, to prolong the process even more, but they did not proceed with the filing. Applicant never finished paying the attorney and according to his secretary the petition was never processed. Eventually, however, they went into foreclosure and lost their house.

Since 2010, Applicant has continued to be the sole financial provider for her family. She initially got a job cleaning apartments. She did this for two years. In July 2012, she was hired by her current employer. In 2013, her husband was involved in a car accident through no fault of his own, that left him unable to work. He has applied for disability. Applicant purchased a new home two years ago, a new car, and has never missed her mortgage or car payment. She plans to pay off all of her debts when she is able.

Applicant professes that when she was questioned by the investigator, she did not know the extent of her financial delinquencies until after she submitted her security clearance questionnaire. She then looked up her credit report online that revealed her delinquencies.

Applicant has provided no documentation to support her contention that she has done anything in regard to the debts, whether it be to dispute them, set up a payment plan, or pay them. Applicant failed to submit any documentation to establish that she has acted responsibly to address her delinquent debts. Thus, according to the Applicant's credit reports in evidence, the following debts remain owing:

1.a., a debt owed to a creditor for a medical account in the approximate amount of \$1,043 remains outstanding.

1.b., a debt owed to a creditor for an account that was charged off in the approximate amount of \$479 remains outstanding.

1.c., a debt owed to a creditor for an account that was placed for collection in the approximate amount of \$402 remains outstanding.

1.d., a debt owed to a creditor for an account that was placed for collection in the approximate amount of \$398 remains outstanding.

1.e., a debt owed to a creditor for a medical account in the approximate amount of \$56 remains outstanding.

1.f., a debt owed to a creditor for an account in the approximate amount of \$388 remains outstanding.

1.g., a debt owed to the Internal Revenue Service for a tax lien entered against her in the approximate amount of \$24,483 remains outstanding. Applicant states that she has been in contact with the IRS and is in the process of making an offer to have the debt resolved.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because she 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 completed an Electronic Questionnaire for Investigations Processing dated July 12, 2012. Section 26 of the questionnaire asked, "In the past seven years, have you filed a petition under any chapter of the bankruptcy code?" The Applicant answered, "NO," to the question. This was a false response. She deliberately failed to disclose the two bankruptcies she filed in 2008, as set forth under allegations 1h., and 1i., of the SOR.

Section 26 of the same questionnaire also asked, "In the past seven years, have you failed to file or pay Federal, state or other taxes when required by law or ordinance?" The Applicant answered, "NO," to the question. This was a false response. She deliberately failed to disclose the Federal tax lien that was entered

against her in September 2009, in the approximate amount of \$24,483 as set forth in allegation 1.g. of the SOR. (Government Exhibit 2.)

Applicant states that she did not intentionally fail to list her Federal tax lien on her security clearance application. She claims that she was not aware of the business taxes owed at the time, as she did not work in the business. She further states that she also did not intentionally fail to disclose her two bankruptcies in 2008. She avers that she was under the impression that her bankruptcies would not count because they were never finalized. (Government Exhibit 2.) The questions on the application regarding her financial history are clear and simple. From the evidence presented, it is pretty clear that Applicant knew or should have known about her Federal tax lien as well as her two bankruptcy filings. She should have answered the questions on the security clearance application correctly. She did not. Thus, it cannot be said that she has shown the requisite good judgment, reliability, and trustworthiness to meet the eligibility requirements for access to classified information.

A letter of recommendation submitted on behalf of the Applicant by the President of the company for which she is employed dated November 16, 2015, indicates that Applicant has proven to be responsible and reliable on the job, and has held two positions and has been moving up the ladder, from a Shipping/Receiving Clerk to a Warehouse Specialist. She is considered to be a phenomenal employee with a positive attitude toward her work, excellent job performance, great interpersonal and communication skills, as well as overall honesty, integrity and good character. (Applicant's Exhibit A.)

Applicant submitted a letter she prepared dated November 30, 2015, that indicates that she is making efforts to resolve the Federal tax debt to the IRS. She provided a copy of the front page of the FORM 656 booklet of an Offer in Compromise, but there is no stated resolution as of yet. (Applicant's Exhibit B.)

## **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.

Condition 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, 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, which demonstrate 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 the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with her security clearance eligibility.

The evidence shows that Applicant remains indebted to each of the creditors listed in the SOR in an amount totaling approximately \$27,000. The only debt she claims that she has been working to resolve is her Federal tax debt, and as of yet she has not reached a settlement. The other delinquent debts in the SOR remain outstanding, as Applicant has failed to address them in any specific detail. Without this evidence, Applicant's history of excessive indebtedness demonstrates a pattern of unreliability, and poor judgment. In fact, she has not provided any documentary evidence to show that she had done anything with respect to resolving these debts. Furthermore, there is no evidence that she has received credit counseling to help her set a budget and learn to live within it, or that her finances are under control. The record is void of sufficient mitigation, and thus, Applicant has failed to establish that she is financially responsible.

Under the particular circumstances of this case, Applicant has not met her burden of proving that she is worthy of a security clearance. She does not have a concrete understanding of her financial responsibilities, and has not sufficiently addressed her delinquent debts in the SOR. Thus, it cannot be said that she has made a good-faith effort to resolve her past due indebtedness. She has not shown that she is or has been reasonably, responsibly, or prudently addressing her financial situation. Applicant has not demonstrated that she can properly handle her financial affairs. Her indebtedness is significant. Assuming that she demonstrates a history and pattern of financial responsibility, including the fact she has not acquired any new debt that she is unable to pay, she may be eligible for a security clearance sometime in the future. However, she is not eligible now. Considering all of the evidence, 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 been irresponsible. Applicant could benefit from intense financial counseling. In this case, none of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

In regard to her personal conduct, Applicant was not truthful and candid with the Government on her security clearance application when she intentionally omitted relevant information concerning her financial record. At the time she completed the application in 2012, she knew or should have known that she had a Federal tax lien and owed back taxes to the IRS, and that she had filed for bankruptcy on two occasions in 2008. Even though her husband ran the business, she must be aware of his financial standing at all times. The only reasonable conclusion for not revealing the truth

concerning her delinquent debts was that she did not want the Government to know about them. There is no excuse for this misconduct.

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* applies. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

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 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 her history of financial indebtedness, and dishonesty, and the effects that it can have on her ability to safeguard classified information. On balance, it is concluded that Applicant has not overcome the Government’s case opposing her request for a security clearance. Accordingly, the evidence supports a finding against 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.
Paragraph 2:	Against the Applicant.
Subpara. 2.a.	Against the Applicant.
Subpara. 2.b.	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 Applicant. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge