



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 10-03710  
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Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Department Counsel  
For Applicant: *Pro se*

September 25, 2011

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on February 1, 2010. (Government Exhibit 1.) On April 8, 2011, the Defense Office of Hearings and Appeals (DOHA), 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.

The Applicant responded to the SOR on April 8, 2011, the document was notarized on April 12, 2011, and she requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on May 24, 2011. A notice of hearing was issued on June 8, 2011, and the hearing was scheduled for July 12, 2011. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7, which were admitted without objection. The Applicant called one witness and presented four exhibits, referred to as Applicant's Exhibits A through D, which were also admitted without objection. She also testified on

her own behalf. The record remained open until close of business on August 15, 2011, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted no additional documentation. The official transcript (Tr.) was received on July 21, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

The Applicant is 51 years old and married a second time. She is a high school graduate. She is employed with a defense contractor as an Engineering 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 she 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. Credit Reports of the Applicant dated February 6, 2010; September 14, 2010; February 24, 2011; May 10, 2011; and July 11, 2011, reflect that the Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$135,000.00. (Government Exhibits 3, 4, 5, 6 and 7.)

The Applicant has worked for her current employer since 1978, for almost thirty years. She has maintained a security clearance most of that time and has never had a security violation. (Tr. p. 35.) In 1995, she got married, and for fifteen years lived a lavish lifestyle with her husband. He earned between \$200,000 and \$255,000 annually, she earned about \$50,000 annually, and she could spend whatever she wanted. (Tr. p. 54.) They purchased a house together and both had a number of credit cards in each of their names that they charged up. (Tr. p. 38.) They paid their bills on time, had no bad debt, and had excellent credit. In 2008, the Applicant and her husband divorced. The divorce decree required the Applicant to pay her ex-husband \$175,000 which she could only obtain by refinancing the house. She did so, and paid him off. To complicate matters, in 2009, she lost her job due to a lack of project funding. She was laid off for eight months. During this period she contacted her creditors and informed them of her situation, but they were not interested in dealing with her. She realized at that point that she had a serious financial problem as she was accustomed to her lavish lifestyle, and had not yet made the adjustment to living on less income.

In March 2009 the Applicant married her current husband. He works between 20 and 35 hours a week and earns between \$400.00 and \$700.00 weekly. (Tr. p. 68.) The Applicant was called back to work after eight months of unemployment. She tried to sell

the house, with the hopes that she could use most of the profit to pay off her delinquent debts. She was unable to sell the house. She refinanced the mortgage and now has an adjustable loan that makes her payments affordable. In September 2009, she hired a debt negotiation firm to help resolve her indebtedness. She became very disappointed with the limited progress the firm was making toward resolving her debts, since she had paid them a total of \$8,000, which was \$900.00 a month for eight months to a year, and they had only paid off one of the Applicant's debts for \$1,200. (Tr. p. 66.) In late 2009 or early 2010, she consulted an attorney who told her that she had been "ripped off" and advised her to file bankruptcy. She hired the attorney who prepared documentation for a Chapter 7 bankruptcy. The Applicant was later informed that she did not qualify because of her income. Her attorney then went to a Chapter 13, but the repayment plan of \$2,600 monthly was more than the Applicant could afford. (Tr. p. 31.) Her attorney then advised her to hold on until her circumstances changed enough in order to meet the income requirement. Since she has been recently laid off, her attorney advised her that she can re-file for Chapter 7 and that she will now qualify. The Applicant plans to file Chapter 7 bankruptcy with the next two months. (Tr. p. 28 and Applicant's Exhibit A.) The Applicant plans to include each of the creditors listed in the SOR.

The following credit card debts remain owing: 1(a). A debt to a creditor in the amount of \$10,307. 1(b). A debt owed to a creditor in the amount of \$1,838. 1(c). A debt owed to a creditor in the amount of \$4,894. 1(d). A debt owed to a creditor in the amount of \$3,897. 1(e). A debt owed to a creditor in the amount of \$4,525. 1(f). A debt owed to a creditor in the amount of \$5,879. 1(g). A debt owed to a creditor in the amount of \$3,765. 1(h). A debt owed to a creditor in the amount of \$2,960. 1(i). A debt owed to a creditor in the amount of \$1,227. 1(j). A debt to a creditor in the amount of \$592. 1(k). A debt owed to a creditor in the amount of \$1,016. 1(l). A debt owed to a creditor in the amount of \$1,840. 1(m). A debt owed to a creditor in the amount of \$14,281. 1(n). A debt owed to a creditor in the amount of \$808.00. 1(o). A debt owed to a creditor in the amount of \$2,477. 1(p). A debt owed to a creditor in the amount of \$3,466. 1(q). A debt owed to a creditor in the amount of \$3,457. 1(r). A debt owed to a creditor in the amount of \$6,774. 1(s). A debt to a creditor in the amount of \$2,219. 1(t). A debt owed to a creditor in the amount of \$10,589. 1(u). A debt owed to a creditor in the amount of \$6,774. 1(v). A debt owed to a creditor in the amount of \$9,623. 1(w). A debt owed to a creditor in the amount of \$2,241. 1(x). A debt owed to a creditor in the amount of \$6,774. 1(y). A debt owed to a creditor in the amount of \$1,409. 1(z). A debt owed to a creditor in the amount of \$7,125. 1(a)(a). A debt owed to a creditor in the amount of \$9,985. 1(b)(b). A debt owed to a creditor in the amount of \$13,109. 1(c)(c). A debt owed to a creditor in the amount of \$2,816. (See Applicant's Answer to the SOR.)

The Applicant's husband testified that in about September 2008, the Applicant put the house up for sale and two days before escrow was to close the deal fell through. Most of the debt listed in the SOR was accumulated during her previous marriage. He and the Applicant live within their means and pay their bills on time. (Tr. pp. 45 - 46.)

Letters of recommendation submitted on behalf of the Applicant from her Branch Manager; coworkers, and a customer, who have known the Applicant for many years, reflect that the Applicant is an excellent employee who is a hard worker, self-sufficient, with experience and skills that have been valuable to the company. She is described as conscientious, dedicated to her job and dependable. She has worked with classified information and adhered to all security rules and regulations in the performance of her duties. She is highly recommended for a security clearance. (Applicant's Exhibits B, C and D.)

## **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:

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;

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, 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 her security clearance eligibility.

The evidence shows that circumstances largely beyond the Applicant's control, namely, her divorce followed by an unexpected job lay-off in 2009, caused her financial difficulties. In addition, to comply with the divorce decree she had to refinance the house to pay off her husband, which added \$175,000 in debt to her loan. For eight months she was out of work, lived on credit cards, and accumulated more debt. Admittedly, since September 2009 she has tried a number of things to resolve her debt. She tried to sell her house, but was unable to do so. She hired a debt negotiation firm and paid them for services for almost a year, but made little or no progress. She then hired an attorney to file bankruptcy on her behalf. She is now planning to file for Chapter 7, and believes that she will now qualify to do so. However, at the present time, she has not yet filed.

Under the particular circumstance of this case, the Applicant has not met her burden of proving that she is worthy of a security clearance. She has not addressed even one of 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 set up a payment plan or made any attempt to pay her debts. She remains excessively indebted. She has not shown that she is or has been reasonably, responsibly or prudently addressing her financial situation. She obviously does not understand the importance of paying her bills on time. At this time, there is insufficient evidence of financial rehabilitation. The Applicant has not demonstrated that she can properly handle her financial affairs or that she is fiscally responsible. Assuming that she follows through with her bankruptcy and discharges her debts, and then shows that she does not acquire new debt that she is unable to pay, she may be eligible for a security clearance in the future. 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 obligation*, apply. Although 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, applies, it is not controlling. Although she hired several entities in efforts to resolve her indebtedness, she made no progress. She remains excessively indebted. Thus, she has not done enough to show that she is fiscally responsible. 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, including her favourable letters of recommendation. 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 financial indebtedness and the effects that it can have on her ability to safeguard classified information. On balance, it is concluded that the Applicant has not overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports a finding against 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 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.
Subpara. 1.m.:	Against the Applicant.
Subpara. 1.n.:	Against the Applicant.
Subpara. 1.o.:	Against the Applicant.
Subpara. 1.p.:	Against the Applicant.
Subpara. 1.q.:	Against the Applicant.

Subpara. 1.r.: Against the Applicant.  
Subpara. 1.s.: Against the Applicant.  
Subpara. 1.t.: Against the Applicant.  
Subpara. 1.u.: Against the Applicant.  
Subpara. 1.v.: Against the Applicant.  
Subpara. 1.w.: Against the Applicant.  
Subpara. 1.x.: Against the Applicant.  
Subpara. 1.y.: Against the Applicant.  
Subpara. 1.z.: Against the Applicant.  
Subpara. 1.a.a: Against the Applicant.  
Subpara. 1.b.b: Against the Applicant.  
Subpara. 1.c.c: 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