



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 11-04680

**Appearances**

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

September 24, 2012

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on January 24, 2011. (Government Exhibit 1.) On March 27, 2012, 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 May 4, 2012, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on June 15, 2012. A notice of hearing was issued on July 3, 2012, scheduling the hearing for July 25, 2012. The Government presented six exhibits, referred to Government Exhibits 1 through 6, which were admitted without objection. The Applicant presented four exhibits, referred to as Applicant's Exhibits A through D, which were admitted without objection. The Applicant also testified on his own behalf. The record remained open until close of business on August 1, 2012, to

allow the Applicant to submit additional documentation. The Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, consisting of three pages, which was admitted without objection. The official transcript (Tr.) was received on August 6, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

The Applicant is 54 years old, married, and has two years of college. He is employed with a defense contractor as a 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 denied allegations 1.(a) through 1.(g) of this guideline asserting that they are duplicates of debts set forth under allegations 1.(h) through 1.(m). Upon close review, it appears that his assertion is correct. He admitted the allegations set forth under 1.(h) through 1.(m) in the SOR. Credit Reports of the Applicant dated February 13, 2007; January 29, 2011; March 7, 2012; and July 24, 2012, reflect that the Applicant is indebted to each of the creditors set forth in allegations 1.(h) through 1.(m). In considering just the delinquent debts set forth in allegations 1.(h) through 1.(m) of the SOR, the Applicant is indebted in the amount totaling at least \$35,000. (Government Exhibits 3, 4, 5 and 6.) The Applicant states that he held a security clearance with his former employer from 2007 to 2010. (See Answer to SOR.)

Prior to 2007, the Applicant had no financial problems. (Government Exhibit 3.) His credit was good and he paid his bills on time. He had also saved about \$30,000 in a 401-K account. (Tr. p. 51.) In 2007, he suffered a debilitating medical condition, (hypertension and anxiety) that placed him on medical leave from work from 2007 to 2009. During this period, he received disability and unemployment benefits but did not earn enough to pay all of his bills. In 2009, he returned to work, but his wife experienced an unexpected high risk pregnancy, and the Applicant was forced to go out on medical leave to take care of her. He was subsequently laid off by his employer. During this period of financial difficulty, the Applicant had to make difficult choices as to what debts he would pay. He chose to keep making payments on his house to avoid foreclosure, to keep the utilities current to avoid disconnection, and to provide bare necessities to his family to avoid becoming homeless. To do this, he exhausted his savings in his 401-K. He was unable to afford to pay his other credit card debts and other bills, and these accounts became delinquent.

As a result, the following debts became delinquent and remain outstanding. A medical bill related to his wife's pregnancy became delinquent in the amount of \$936 and remains outstanding. A delinquent debt owed to a creditor in the amount of \$125 remains outstanding. A delinquent debt owed to a bank in the amount of \$6,200 remains outstanding. A delinquent debt owed to a creditor in the amount of \$4,700 remains outstanding. A delinquent debt owed to a creditor in the amount of \$2,800 remains outstanding. A delinquent debt owed to a creditor in the amount of \$6,000 remains outstanding. A delinquent debt owed to a creditor in the amount of \$10,500 remains outstanding. A delinquent debt owed to a creditor in the amount of \$5,000 remains outstanding. Since 2008, other than one debt in the amount of \$101 that he recently paid in full, the others remain owing and delinquent. (Applicant's Post-Hearing Exhibit A.) He has not made any attempts to contact any of his delinquent creditors to make a payment or to set up any payment plans to resolve his indebtedness.

In July 2010, the Applicant started working full time for his current employer, and has had no break in service since then. At the time he was hired, he was candid, open and honest with his employer and informed them of his serious financial problems. The Applicant testified that he was told that the job would not need a security clearance. Since July 2010, he has not had the money to pay his delinquent debts. He currently works as much overtime as possible and brings home approximately \$3,000 to \$4,000 monthly. He is working on a loan modification plan on his home and has purchased a car for his wife. (Tr. p. 54.) His utilities are current. His goal is to resolve his delinquent debts as soon as he is able to. He hopes to receive a pay increase soon and plans to use the extra money to resolve his debts.

Two letters of recommendation were submitted on behalf of the Applicant. A letter from his supervisor confirms that the Applicant did reveal his financial problems when he was hired by the company. His supervisor states that this reinforces his candor and trustworthiness. He finds the Applicant to be extremely reliable and professional in every way and deserving of a security clearance. (Applicant's Exhibit B.) A letter from the Applicant's site manager states among other laudatory things, that the Applicant consistently fulfills critical time sensitive requirements, demonstrates good judgment, and is a true asset to the company. (Applicant's Exhibit C.)

The Applicant is the sole financial supporter of the household. Up until now, he has not been able to afford to pay any of his delinquent debts. The Applicant's wife is now again pregnant and she does not work outside of the home. In addition to his other responsibilities, the Applicant will have to prepare for this added expense.

## **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). 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.

The evidence shows that the Applicant has experienced some circumstances beyond his control that have negatively impacted his finances, namely, a two year gap in employment brought on by a medical condition, and his wife’s high risk pregnancy

followed by periods of disability and unemployment. As a result, he could not afford to pay his bills and he became excessively indebted. Since becoming employed in 2010, however, he still has not had the money to resolve his delinquent debts. All but one remain delinquent and owing, and he is excessively indebted. He hopes to be able to pay his debts in the future, but presently, his family is growing, and his expenses will increase. Clearly, he needs a new approach to his finances. Financial counseling and a set budget for him to follow would be extremely helpful.

The Applicant has not done enough to show that he is fiscally responsible. Although he seems to understand the importance of paying his bills on time, he simply has not been able to tackle his delinquencies. At this time, there is insufficient evidence of financial rehabilitation. The Applicant has not demonstrated that he can properly handle his financial affairs or that he is fiscally responsible.

Under the particular circumstances of this case, the Applicant has not met his burden of proving that he is worthy of a security clearance. He does not have a concrete plan as to how he will sufficiently address his delinquent debts in the SOR or how he will manage his finances in the future. Thus, it cannot be said that he has made a good-faith effort to resolve his past due indebtedness. He has not shown that he is or has been reasonably, responsibly or prudently addressing his financial situation. Assuming that he starts to resolve his debts and continues to do so, and then shows that he has not acquired any new debt that he is unable to pay, 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. Mitigating Condition 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 also applies, but is not controlling here. Admittedly, the Applicant did experience some unforeseen circumstances, but he has been working full time since July 2010, and he has paid only one small delinquent debt toward resolving his indebtedness. 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 the effects that 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 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.

### **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