



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. 11-04926

**Appearances**

For Government: Melvin A. Howry, Department Counsel  
For Applicant: *Pro se*

September 13, 2012

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on December 1, 2010. (Government Exhibit 1.) On a date uncertain, 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 7, 2012, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on June 4, 2012. A notice of hearing was issued on June 21, 2012, scheduling the hearing for July 11, 2012, by video-teleconference. The Government presented six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant presented nine exhibits, referred to as Applicant's Exhibits A through F, and H through J, which were admitted without objection. There is no Exhibit G. The Applicant also testified on her own behalf. The

record remained open until close of business on August 17, 2012, to allow the Applicant to submit additional documentation. The Applicant submitted four Post-Hearing Exhibits referred to as Applicant's Post-Hearing Exhibits A through D which were admitted without objection. The official transcript (Tr.) was received on July 19, 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 38 years old, single, and has a Bachelors of Arts degree in English. She is employed with a defense contractor as a Security Consultant 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 April 6, 2012, and July 2, 2012, reflect that the Applicant is indebted to a number of creditors set forth in the SOR, in an amount totaling at least \$39,000. (Government Exhibits 2 and 5.) The Applicant has held a security clearance since 2001.

The Applicant has a history of making poor financial decisions and essentially living beyond her means that have caused her financial problems. In 2004, she moved out of the country to take a job with a defense contractor. Without a lot of thought, she bought a condominium, and used her credit cards to buy furniture and set up her household. In 2005, after her condominium association fees doubled, (an expense she had not expected), she sold the condominium and bought a house. Again being naive, she did not anticipate the costs associated with a house. She testified that her utilities in the house currently run about \$500 monthly. Her expenses were more than she could afford and she fell behind on her mortgage payments. To increase her income, she decided to pursue a part-time job teaching pilates. To do so, she enrolled and attended pilates training courses. The pilates training and its related expenses were also an expense that she did not account for. The costs associated involved travel, flights, hotels, rental cars and tuition that became very expensive. She had to use credit cards to pay for some of the expenses. She testified that she spent between \$15,000 and \$20,000 on this venture. In 2009, she began working for her current employer and by this point her finances were in very poor condition.

1.(a) The Applicant is indebted to a creditor for a delinquent credit card in the amount of \$20,443 that has been charged off. She explained she missed a payment on her credit card and the interest rate increased to 29 percent. She was no longer able to make the payments. The creditor would not negotiate with her to lower the interest rate. At this point, the creditor has agreed to settle the account for \$10,000, but at this time, she does not have the money to pay it.

1.(b) The Applicant is indebted to a creditor for a delinquent credit card in the amount of \$11,096 that has been charged off. She explained that she initially set up a payment plan and the payment was automatically deducted out of her bank account until she could no longer afford to pay it. The debt remains owing.

1.(c) The Applicant is indebted to a bank for a past due amount of \$7,694 on a balance of \$237,990 owed for her mortgage on her house. She has set up a payment plan with the bank and is now making double mortgage payments in order to try to bring the real estate loan current. (Applicant's Exhibits A and B.)

1.(d) The Applicant is indebted to a bank for a past due amount of \$1,550 on a balance of \$10,083 owed for a personal loan. (Applicant's Exhibit B and D.) On July 20, 2012, she will begin making payments of \$329 monthly toward the loan. (Tr. p. 33-34.)

The Applicant currently earns approximately \$110,000 annually. She admits that there is no justifiable excuse for her current financial situation. She testified that she is currently spending almost \$5,000 monthly to try to get current on her delinquent debts. Her personal financial statement dated July 11, 2012, indicates that after paying her monthly expenses and double payments on her mortgage, she has \$67 left at the end of the month. (Applicant's Exhibit J.) That does not take into consideration any unexpected expenses that may occur.

The Applicant states that she is currently working to resolve her debts. She submitted a document showing that she made a payment on a credit card that is not alleged in the SOR, but is reflected on her credit report. (Applicant's Exhibit C.) Her only asset is her house, and she has now put her house up for sale. (Applicant's Exhibit E.) When and if her house sells, she states that she will have the money to settle out the big debts owed to the creditors set forth in 1(a) and 1(b). (Tr. p. 35.) In the mean time, to save money, she has cancelled her internet, telephone, and cable.

Applicant's performance evaluation for the rating period from July 1, 2011, through December 31, 2011, indicates that she has met expectations or exceeded expectations on the job in every category. (Applicant's Exhibit F.)

A letter of commendation was awarded by the Commanding Office of her duty station to the Applicant for her outstanding dedication and performance of duty. (Applicant's Exhibit I.)

## 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:

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, 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 her security clearance eligibility.

The evidence shows that the Applicant has for many years made a series of poor financial decisions that have negatively impacted her finances and are responsible for her current financial situation. Since moving out of the country, she has had a consistent history of not meeting her financial obligations because she was spending money that she could not afford to spend. As a result, she has struggled to pay her bills. Instead of renting, she purchased a condominium that was really too expensive for her. When that became a problem, she purchased a house, with the thought that she would be saving money. Instead, it has ended up costing her more money. In addition, she spent a large amount of money to pursue pilates training that she really could not afford. Although she is currently working toward resolving her delinquent debts, she remains excessively indebted to her creditors. Clearly, she needs a new approach to her finances. Financial counseling and a set budget for her to follow would be extremely helpful.

The Applicant has not done enough to show that she is fiscally responsible. Although she seems to understand the importance of paying her bills on time, she simply has not been able to do so. 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.

Under the particular circumstances of this case, the Applicant has not met her burden of proving that she is worthy of a security clearance. She does not have a concrete plan as to how she will sufficiently address her delinquent debts in the SOR or how she will manage her finances in the future. 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. Assuming that she continues to work to resolve her debts and then shows that she has not acquired any new debt that she is unable to pay, she 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. None of the mitigation 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 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.

### **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