



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. 11-04988

**Appearances**

For Government: Caroline H. Jefferys, Department Counsel  
For Applicant: *Pro se*

August 15, 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 14, 2011. (Government Exhibit 5.) On February 10, 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 in writing on March 19, 2012, in which he 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 the Applicant on April 27, 2012. The Applicant received the FORM on May 12, 2012. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. The Applicant failed to submit a reply to the FORM. This case was assigned to the undersigned on June 27, 2012. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

## FINDINGS OF FACT

The Applicant is 36 years old and divorced. He is employed with a defense contractor as a Mechanic 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 admitted each of the allegations set forth under this guideline. He contends that the debts set forth in subparagraphs 1.a, 1.c, 1.e, 1.f, and 1.g, have been paid in full. The others he is currently working to resolve. Credit Reports of the Applicant dated January 27, 2011; and January 25, 2012, reflect that the Applicant is indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$27,300. (Government Exhibits 7 and 8.)

The Applicant has a history of financial problems as evidenced by his current delinquent debts. He was unemployed for extended periods in 2004, 2005, 2006, 2008, 2009 and 2010. In 2006, the Applicant and his wife divorced. He began working for his current employer since January 2011.

The following delinquent debts set forth in the SOR are outstanding.

1.a. A credit card debt in the amount of \$1,045 remains owing. (Government Exhibits 6, 7 and 8.) The Applicant claims that he has paid off the debt but has submitted no supporting documentation. (Government Exhibit 4.)

1.b. A debt owed to a creditor in the amount of \$2,230 remains owing. (Government Exhibits 6, 7 and 8.) The Applicant claims that he is currently working to resolve the debt. (Government Exhibit 4.)

1.c. A debt owed to a creditor in the amount of \$512 remains owing. (Government Exhibits 5, 6, 7 and 8.) The Applicant contends that the debt has been paid but submitted no supporting documentation. (Government Exhibit 4.)

1.d. A debt owed to a creditor in the amount of \$4,797 remains owing. (Government Exhibit 5, 6 and 8.) The Applicant claims that he is currently working to resolve the debt. (Government Exhibit 4.)

1.e. A debt owed to a creditor in the amount of \$17,287 remains owing. (Government Exhibits 5, 6 and 8.) The Applicant claims that he is currently working to resolve the debt. (Government Exhibit 4.)

1.f. A debt owed to a creditor in the amount of \$872 remains owing. (Government Exhibits 6 and 8.) The Applicant claims that the debt has been paid but has submitted no supporting documentation. (Government Exhibit 4.)

1.g. A debt owed to a creditor in the amount of \$564 remains owing. (Government Exhibits 5, 6 and 8.) The Applicant claims that he has paid off the debt but has submitted no supporting documentation. (Government Exhibit 4.)

## **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 some circumstances beyond the Applicant's control, namely, long periods of unemployment and a divorce, contributed to his financial difficulties. Since January 2011, he has worked full time. He states that he has paid off several of the debts and is currently working to resolve the others, but gives no specifics. He has failed to provide proof of payment or any documentary evidence in mitigation to support his statements concerning his delinquent debts. Without more information concerning these debts and how they are being resolved, if they are, the Applicant has failed to establish that he is fiscally responsible. In fact, the record is void as to evidence in mitigation.

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 understanding of his financial responsibilities and has not sufficiently addressed his delinquent debts in the SOR. 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. He has failed to explain what is being done to resolve them. There is no evidence in the record that he has paid even one of his delinquent debts. He obviously does not understand the importance of paying his bills on time. 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. His debts are significant. Assuming that he works to resolve his debts 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. 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. 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.

## **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