



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



In the matter of:	)	
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Applicant for Security Clearance	)	ISCR Case No. 11-07834

**Appearances**

For Government: Philip J. Katauskas, Department Counsel  
For Applicant: *Pro se*

November 29, 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 3, 2011. (Government Exhibit 5.) 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 in writing on July 23, 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 August 23, 2012. The Applicant received the FORM on August 30, 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 October 29, 2012. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

## FINDINGS OF FACT

The Applicant is 32 years old and married. He is employed with a defense contractor as an Avionics 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 delinquent debts set forth in the SOR under this guideline. Credit Reports of the Applicant dated January 12, 2011; and April 26, 2012, reflect that the Applicant is indebted to each of these creditors in an amount totaling at least \$64,000. (Government Exhibits 8 and 9.)

The Applicant began working for his current employer, a defense contractor, in November 2007. He has delinquent debts that are owed to at least eighteen creditors listed in the SOR. He believes that his financial problems can be attributed to poor financial management, student loans that became due, his wife not working, and expenses associated with the birth of his son.

During his interview in January 2011, the Applicant stated that he believes his current financial standing is now stable. He recently received a raise in pay at work that he believes will help him resolve his debts. He explained that he did not seek financial counseling as he believes that the companies that offer the services are shady. He plans to resolve his debts on his own. He obtained a copy of his credit report and is in the process of contacting his creditors to set up payment arrangements.

The Applicant indicated that since his interview in January 2011, his additional monies went to his son's preschool expenses and auto repairs. He states that he is in the middle of moving to a better school district and hopes to buy a new residence. He is looking to get his credit cleaned up in the next three years. (Government Exhibit 6.)

The following delinquent debts remain owing and unpaid, except 1(c). 1(a) A debt for a medical account in the amount of \$185.00 is outstanding. 1(b) A debt for a medical account in the amount of \$31 is outstanding. 1(c) The Applicant is making payments of \$125 every two weeks toward his student loan debt in the amount of \$8,570. 1(d) A debt for a student loan in the amount of \$14,924 is outstanding. 1(e) A debt for a student loan in the amount of \$15,960 is outstanding. 1(f) A debt for a student loan in the amount of \$9,157 is outstanding. 1(g) A debt owed to a creditor in the amount of \$764.00 is outstanding. 1(h) A debt for a student loan in the amount of \$7,354 is outstanding. 1(i) A debt owed to a creditor in the amount of \$4,239 is

outstanding. 1(j) A debt owed to a bank in the amount of \$510 is outstanding. 1(k) A debt owed to a creditor in the amount of \$76 is outstanding. 1(l) A debt owed to a creditor in the amount of \$1,572 is outstanding. 1(m) A debt owed to a creditor in the amount of \$402 is outstanding. 1(n) A debt owed to a creditor in the amount of \$819 is outstanding. 1(o) A debt owed to a creditor in the amount of \$1,100 is outstanding. 1(p) A debt owed to a creditor in the amount of \$1,111 is outstanding. 1(q) A debt owed to a creditor in the amount of \$962 is outstanding. 1(r) A debt owed to a bank in the amount of \$420 is outstanding.

## 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 his security clearance eligibility.

There is no evidence in the record that shows that the Applicant has resolved his excessive indebtedness. Other than the student loan payment he is making in the amount of \$125 every two weeks, toward one of his student loans, there is no other evidence that he is paying his debts. No payment plans have been established and they remain delinquent. Although his statement to the investigator during his security clearance background investigation confirmed that he would be working to resolve his debts, there is no evidence of the sort. Presently, he remains excessively indebted and his financial situation remains dismal.

The Applicant has not done anything to show that he is fiscally responsible. It does not appear that he understands the importance of paying his bills on time or it may possibly be that he simply does not have the financial resources to address his debts. In any case, 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. 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 begins to work 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. 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 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.:	For 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

### **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

