



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 11-10446  
 )  
Applicant for Security Clearance )

**Appearances**

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

May 16, 2013

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (E-QIP) on April 28, 2011. (Government Exhibit 1.) On November 21, 2012, the Department of Defense (DoD) 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) detailing the security concerns under Guidelines F and E for Applicant. The SOR set forth the reasons why DoD adjudicators 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 Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR on December 13, 2012, and he requested an administrative hearing before an Administrative Judge. This case was assigned to the undersigned on February 19, 2013. A notice of hearing was issued on March 27, 2013, and the hearing was scheduled for April 16, 2013, by video-conference. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7, which were admitted without objection. Applicant presented seven exhibits, referred to as Applicant's Exhibits A through G, which were admitted without objection. He also testified on his own behalf. The record remained open until close of

business on April 22, 2013, to allow Applicant to submit additional documentation. He submitted three Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A through C, which were admitted without objection. The official transcript (Tr.) was received on April 24, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **FINDINGS OF FACT**

Applicant is 58 years old and is married with two children and two grand children. He has a high school diploma and some adult training. He is employed with a defense contractor as a Journeyman Fuel Farm Operator and is seeking to obtain a security clearance in connection with this employment.

The Government opposes 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 Applicant is ineligible for clearance because he is financially overextended and at risk of having to engage in illegal acts to generate funds.

Applicant admitted each of the allegations set forth in the SOR under this guideline, except 1.(d). He claims that the debt set forth in 1.(d) was settled in November 2012. Credit Reports concerning Applicant dated May 7, 2011; November 14, 2012; August 15, 2012; and April 16, 2013, reflect that Applicant was at one time indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$28,000. (Government Exhibits 3, 4, 5, and 6)

Applicant served four years in the United States Air Force, and then seventeen years in the Air National Guard before retiring as a Staff Sergeant in August 2000. After twenty-one years of honorable military service, he began working for his current employer in 2001. He states that he has held a security clearance since 1994 and has never had a security violation. Over the years he has received several job promotions.

Applicant and his wife have been married for 38 years. In 2005, the Applicant began experiencing financial problems. He and his wife were spending more than they were bringing in, and using credit cards to pay for their things. They purchased televisions, traveled from island to island, went shopping at the malls, and spent money on their daughters and grandchildren. Their debts snowballed to the point where they could not afford to pay them.

The following four delinquent debts listed in the SOR became owing. Over the past year, the Applicant has been working to resolve these debts. 1(a). A delinquent credit card debt owed to a bank in the amount of \$9,136.18 was outstanding. In January 2012, the Applicant set up a payment plan with the creditor that he has been

following. Since January 6, 2012, the Applicant has been making regular monthly payments of \$50.00 to the creditor to resolve the debt. (Applicant's Post-Hearing Exhibit A.) 1(b). A delinquent credit card debt owed to a bank in the amount of \$6,874.18 was outstanding. In February 2012 the Applicant set up a payment plan that he has been following. Since February 2012 the Applicant has been making regular monthly payments of \$120.00 to the creditor to resolve the debt. 1(c). A delinquent credit card debt owed to a bank in the amount of \$7,218.27 was outstanding. In February 2012 the Applicant set up a payment plan that he has been following. Since February 2012 the Applicant has been making regular monthly payment of \$120.00 to the creditor to resolve the debt. 1(d). A delinquent credit card debt owed to a department store in the amount of \$6,154.00 was resolved in November 2012 for the amount of \$2,087.56. The three major creditor agencies were instructed at that time to delete this account from the Applicant's credit report. (Applicant's Exhibit F.)

A letter from the Applicant's supervisor dated February 26, 2013, indicates that the Applicant is hardworking, conscientious, responsible and trustworthy and he leads a group of 2 other fuel farm operators. He has been nominated on several occasions for Employee of the Quarter and has received numerous On The Spot Awards. (Applicant's Exhibit A.)

Applicant's performance appraisals for the past four years, from 2009 through 2012, reflect either "excellent" ratings or "very good" ratings in every category. (Applicant's Exhibit B.) The Applicant has also received awards and recognition for his excellence on the job, as well as numerous On The Spot Awards. (Applicant's Exhibit C.)

Currently, Applicant is bring home about \$3,000 monthly. He took on a second job to help resolve his debts sooner. His wife brings in about \$2,000 monthly and his oldest daughter is paying the electric bill. They are no incurring any new debt and he is able to pay his delinquent debts according to the payment plan.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance because he has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations.

Applicant completed his security clearance application, an Electronic Questionnaires for Investigations Processing, dated April 28, 2011. (Government Exhibit 1.) The Government contends that the Applicant intentionally concealed material information from the Government when answering the following questions. Question 26.(h) asked him if he had an account or credit card suspended, charged off, or cancelled for failing to pay as agreed. He answered, "NO." This was a false answer. Question 26.(m) asked him if he has been over 180 days delinquent on any debts. He answered, "NO." This was a false answer. Question 26.(n) asked him if he is currently over 90 days delinquent on any debts. He answered, "NO." This was also a false answer.

Applicant credibly testified that he did not deliberately intent to conceal any information from the Government on his security clearance application. He admits that he was not careful in answering the questions, and did not thoroughly read each question before answering it like he should have. In fact, Department Counsel noted that he also failed to list that he had been in the military on his security clearance application which is looked upon favorably. (Tr. p. 54.) Applicant was grossly negligent, but not intentionally deceitful. He is sincerely remorseful and understands the importance of filling out the security clearance application accurately. He indicates that this problem will never occur again. (Tr. Pp. 43-46.)

## **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.(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

### Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers

during the security clearance process or any other failure to cooperate with the security clearance process.

Condition that could raise a security concern:

None.

Condition 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 behavioral 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 adverse to an applicant 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 and falsification 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 Applicant has been financially irresponsible (Guideline F). This evidence indicates possible poor judgment, unreliability and untrustworthiness on the part of Applicant. Because of the scope and nature of Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

The evidence shows that Applicant became excessively indebted because he was financial irresponsible. He candidly admitted that he and his wife were living for sometime beyond their means. Simply stated, they purchased things they could not afford. Since January or February 2012, the Applicant has been working hard to resolve his indebtedness, and he has made great progress. He has set up payments plans with each of his outstanding creditors and he is following those plans. He has taken on a second job to earn more money to put toward resolving his debts. He is no longer spending money he does not have. He has changed his spending habits and is living within a strict budget.

Applicant clearly understands that he must remain fiscally responsible at all times if he is to hold a security clearance. He has made a good-faith effort to resolve his past-due indebtedness. He has not incurred any new debt and is living within a budget. He

has clearly demonstrated that he can properly handle his financial affairs, however he must continue to follow his payment plans and resolve his debts in a timely fashion. In the event that he does not resolve his debts according to the plan, his security clearance will be in immediate jeopardy. At this time, however, there is sufficient evidence of financial rehabilitation. Considering all of the evidence, Applicant has 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. However, Mitigating Conditions 20.(c) *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*; and 20.(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* also apply. Accordingly, I find for Applicant under Guideline F (Financial Considerations).

The evidence also shows that Applicant did not deliberately conceal financial information from the Government on his security clearance application. He had signed releases to allow the Government to obtain his financial records and knew that the Government would become aware of his credit reports. He also failed to list his military service which is to his benefit. He was careless, did not read the questions carefully, and was negligent in answering the questions. He understands that this misconduct can never occur again. Accordingly, Guideline E (Personal Conduct) is found for the Applicant.

I have also considered the "whole-person concept" in evaluating 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 good judgement, trustworthiness, reliability, candor, and a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

I have considered all of the evidence presented, including Applicant's favorable letter of recommendation, favorable performance appraisals, and his favorable work history. They 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 Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the SOR.

## **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For Applicant.  
Subpara. 1.a.: For Applicant.  
Subpara. 1.b.: For Applicant.  
Subpara. 1.c.: For Applicant.  
Subpara. 1.d.: For Applicant.

Paragraph 2: For Applicant.  
Subpara. 2.a.: For Applicant.

## **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Eligibility for access to classified information is granted.

Darlene Lokey Anderson  
Administrative Judge