



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 11-14655  
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Applicant for Security Clearance )

**Appearances**

For Government: Candace Le'i Garcia, Department Counsel  
For Applicant: *Pro se*

June 27, 2014

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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 September 23, 2011. (Government Exhibit 4.) On August 20, 2013, 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) 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 a date uncertain, 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 or about November 21, 2013. The Applicant received the FORM on January 31, 2014. 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 May 15, 2014.

Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

The Applicant is 47 years old and married. He is employed with a defense contractor as a Help Desk 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.

Applicant denied each of the allegations set forth under this guideline, except 1.d., and 1.f. Credit Reports of the Applicant dated October 6, 2011; January 9, 2013; July 1, 2013; and November 20, 2013, reflect that the Applicant is indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$74,000. (Government Exhibits 6, 7, 8, and 9.)

The Applicant has a history of financial problems as evidenced by his current delinquent debts. The record is lacking information as to the circumstances surrounding how or why the Applicant acquired his delinquent debts, except that he has been unable to pay many of them due to his child support arrears. He offered no further information regarding unemployment, underemployment, medical problems, divorce or any other applicable mitigation.

Based upon the Applicant's credit reports in the record, the following delinquent debts set forth in the SOR are outstanding:

1.a. Applicant is indebted to a creditor for a delinquent debt in the amount of \$520. Applicant claims that the item is an illegal credit reporting as defined by the Fair Credit Reporting Act and is being disputed for removal with all three credit bureaus.

1.b. Applicant's is indebted to a creditor for a delinquent debt in the amount of \$886. Applicant claims that this is an illegal reporting and its age is beyond the statute of limitations for collectability under applicable state law. It is being disputed for removal from his credit reports.

1.c. Applicant is indebted to a creditor for a delinquent debt in the amount of \$4,716. Applicant claims the debt is unenforceable due to expiration of the statute of limitations.

1.d. Applicant is indebted to a creditor for a delinquent debt in the amount of \$27,162. This debt is for child support arrears that the Applicant is paying on a monthly basis.

1.e. Applicant is indebted to a creditor for a delinquent debt in the amount of \$727. Applicant claims the debt is unenforceable due to expiration of the statute of limitations.

1.f. Applicant is indebted to a creditor for a delinquent debt in the amount of \$18,230. This is a debt for student loans. Applicant claims the debt is unenforceable due to the expiration of the statute of limitations.

1.g. Applicant is indebted to a creditor for a delinquent debt in the amount of \$117. Applicant claims the debt is illegal and inaccurate reporting, and was deleted from all three credit bureaus on August 19, 2013.

1.h. Applicant is indebted to a creditor for a delinquent debt in the amount of \$114. Applicant claims the debt is illegal and inaccurate reporting, and was deleted from all three credit bureaus on August 19, 2013.

1.i. Applicant is indebted to a creditor for a delinquent debt in the amount of \$122. Applicant claims the debt is illegal and inaccurate reporting, and was deleted from all three credit bureaus on August 19, 2013.

1.j Applicant is indebted to a creditor for a delinquent debt in the amount of \$82. Applicant claims the debt is illegal and inaccurate reporting, and was deleted from all three credit bureaus on August 19, 2013.

1.k. Applicant is indebted to a creditor for a delinquent debt in the amount of \$813. Applicant claims the debt is illegal and inaccurate reporting, and was deleted from all three credit bureaus on August 19, 2013.

1.l. Applicant's is indebted to a creditor for a delinquent debt in the amount of \$12,368. This is a debt for a car that the Applicant purchased. Applicant claims the debt is illegal and inaccurate reporting, and was deleted from all three credit bureaus on August 19, 2013.

1.m. Applicant is indebted to a creditor for a delinquent debt in the amount of \$820. This is a debt for a balance owed on a broken lease agreement. Applicant claims the debt is illegal and inaccurate reporting, and was deleted from all three credit bureaus on August 19, 2013.

1.n. Applicant is indebted to a creditor for a delinquent debt in the amount of \$753. Applicant claims the debt is illegal and inaccurate reporting, and was deleted from all three credit bureaus on August 19, 2013.

1.o. Applicant is indebted to a creditor for a delinquent debt in the amount of \$5,352. Applicant claims the debt is illegal and inaccurate reporting, and was deleted from all three credit bureaus on August 19, 2013.

1.p. Applicant is indebted to a creditor for a delinquent debt in the amount of \$789. Applicant claims the debt is illegal and inaccurate reporting, and was deleted from all three credit bureaus on August 19, 2013.

1.q. Applicant's is indebted to a creditor for a delinquent debt in the amount of \$323. Applicant claims the debt is illegal and inaccurate reporting, and was deleted from all three credit bureaus on August 19, 2013.

1.r. Applicant is indebted to a creditor for a delinquent debt in the amount of \$113. Applicant claims the debt is illegal and inaccurate reporting, and was deleted from all three credit bureaus on August 19, 2013.

In February 2013, Applicant contacted a credit counseling agency to review and assist him with various negative entries on his credit report. They determined that the debts set forth in 1.a. and 1h through 1.r., are illegal; that 1.c. and 1.e., are beyond the statute of limitations; and that 1.d. is being timely paid. With respect to the debt set forth in 1.d., Applicant does not expect to have it paid in full until 2016. The debt set forth in 1.f., is a student loan. Applicant's main argument hinges on his assertion that several of the entries were inaccurate and illegal, and not an enforceable debt due to the statute of limitations under their state rules. Based upon this legal principle, they requested that many of the delinquent debts listed in his credit report be removed. A letter dated September 18, 2013, from the credit counseling agency confirms this position. (See attachment to Applicant's Answer tom SOR.)

There is no evidence in the record to show that the Applicant paid off any of the delinquent debts set forth in the SOR. Furthermore, he has failed to submit any documentary evidence to demonstrate that he has even set up payment arrangements with any of his creditors. There are no receipts or proof of payments. Other than arguing than the debts are unenforceable, there is insufficient evidence in the record to show that the Applicant can meet his financial obligations, reflecting good self-control, good judgment, and reliability.

## **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 obligations.

### 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). This 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 Applicant’s delinquent debts have not been paid. Applicant argues for the most part, that the delinquent debts set forth in the SOR are illegal and unenforceable due to the application of the statute of limitations. On this basis, Applicant believes that he is not legally responsible to pay the debts.

Applicant's history of excessive indebtedness, without sufficient mitigation, demonstrates a pattern of unreliability and poor judgment. In fact, by using the statute of limitations as his argument, he has avoided paying any of his debts. Relying on the debts to fall off of his credit report is insufficient to show that he has taken steps to resolve them. The record is also lacking any evidence concerning the conditions that brought forth his financial problems in the first place. Applicant has failed to provide proof of payment, or receipts, or any documentation to demonstrate that he has resolved his delinquent debts. There is nothing in the record to show that Applicant can live within his means. Without more, the Applicant has failed to establish that he is fiscally responsible. Furthermore, there is no evidence that he has received credit counseling to help him set a budget and learn to live within it, or that his finances are under control.

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. There is inadequate evidence in the record that he has paid even one of his delinquent debts. 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 demonstrates a history and pattern of fiscal responsibility, including the fact 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, he is not eligible 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 mitigating 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 history of 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.
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