



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 12-03606  
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Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Department Counsel  
For Applicant: *Pro se*

March 25, 2014

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Questionnaire for National Security Positions, (SF-86) on November 15, 2011. (Government Exhibit 5.) On November 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) detailing the security concerns under Guidelines J, E, and F 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 in writing on December 6, 2013, and 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 Applicant on January 7, 2014. Applicant received the FORM on January 17, 2014. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant submitted a response to the FORM dated February 3, 2014. Department Counsel had no objection, and the documents were admitted into evidence as

Applicant's Exhibits 1 through 10. This case was assigned to the undersigned on February 25, 2014. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

Applicant is 47 years old, divorced a second time, with four children who do not live with him. He has a high school diploma and some military training. He also completed some on-line college courses, and earned a certificate in industrial management. He is employed by a defense contractor as a Quality/EHS Manager and is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline J - Criminal Conduct). The Government alleges that Applicant is ineligible for clearance because he engaged in Criminal Conduct.

Applicant served in the United States Air Force from November 1984 to November 1992. He received an Honorable Discharge from his first enlistment on January 5, 1988. (Applicant's Exhibit 4.) In January 1992, during his final enlistment, Applicant received a Bad Conduct Discharge. (Applicant's Exhibit 5, and Government Exhibit 10.) Since January 1996, he has been employed on a full time basis with his current employer.

Applicant criminal history began in 1991, and has continued off and on until at least 2008. In September 1991, at the age of 24, Applicant pled guilty to five counts of uttering worthless checks, a felony. He received a five year deferred sentence and completed five years probation. Applicant explained that at the time he was recently married and had a child on the way. He allowed the pressures of beginning a family to overwhelm him and he made bad decisions.

While serving on active duty in the U.S. Air Force in January 1992, at the age of 25, Applicant was convicted at a General Court-Martial of uttering bad checks totaling approximately \$6,000 and failure to pay debts. He was sentenced to a Bad Conduct Discharge, 21 months confinement, and a reduction to paygrade E-1. He was incarcerated from January to October 1992.

In December 2004, at the age of 38, Applicant was charged with 1<sup>st</sup> degree theft, over \$2,500. From about November 2002 to about November 2003, while serving as a firefighter and bookkeeper with a volunteer Fire Department, he stole approximately \$18,000 by writing unauthorized checks on the Department's bank account. Applicant stated that at the time he was going through a second divorce and having a child born out of wedlock. These things, at least in part, led him to resume a drinking habit that contributed to him taking the money. Applicant explained that he turned himself into the Sheriff's office after being confronted and entered into an agreement with the Department's insurer to make restitution. Applicant currently still owes the insurer approximately \$12,170.

In January 2008, at the age of 41, Applicant was arrested and charged with Driving While Intoxicated (DWI.) He pled guilty to misdemeanor Driving While Intoxicated, paid a fine, served a year on probation, and his conviction was then discharged. From May to June 2008, Applicant sought out alcohol counseling through his employee assistance program. He states that since the program he has remained completely sober, which has vastly improved his personal and professional life.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that 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.

The criminal conduct outlined above reveals that the Applicant has engaged in a history of personal conduct that shows poor judgment, unreliability and untrustworthiness.

Applicant completed a security clearance application dated November 15, 2011. (Government Exhibit 5.) Under Section 15: regarding Military History Discharge detail, after responding, "Yes," to being discharged from U.S. military service, when asked to list the type of discharge he received, Applicant answered "General". He also listed that it was "Other than Honorable". He failed to disclose that he was actually separated with a Bad Conduct Discharge. (Applicant's Exhibit 3.)

Applicant denies that he deliberately attempted to conceal information or mislead the Government investigation when he answered as he did the question regarding his military discharge on his security clearance questionnaire. He states that at the time of his discharge it was his understanding that a Bad Conduct Discharge was considered a General Discharge. He states that he now realizes differently. I do not find this explanation convincing. If this were true, a simple review of his DD214 would have corrected any misconception on his part. Since he was untruthful, the only rational explanation for this can be that he did not want the Government to know or to pay particular attention to this information.

Paragraph 3 (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 admits the allegations set forth in subparagraphs 3.a., through 3.v., under this guideline. He denies allegations 3.u., and 3.w. He has a history of financial indebtedness that he attributes to several things. His 2001 and 2005 divorces, his battle with alcohol, and the fact that he fathered a child out of wedlock. Credit Reports of the Applicant reflect that each of the delinquent debts set forth in the SOR totaling approximately \$10,000 were at one time owing. In July 2004 Applicant filed for Chapter 13 bankruptcy protection. In October 2009 the bankruptcy was discharged.

In December 2011, during his initial security clearance background interview, when confronted with his numerous delinquent debts, Applicant told the investigator that

he would immediately contact his creditors and begin to resolve his debts. Applicant failed to do this. Applicant was complacent and did not take any concrete action until 2013.

The following delinquent debts went unpaid. A delinquent debt in the amount of \$12,170 owed for restitution for funds stolen from the Dallas County Volunteer Fire Department; A delinquent debt owed to a utility company in the amount of \$404; A delinquent debt owed to a telephone company in the amount of \$1,205; A delinquent debt owed to a cash advance company in the amount of \$913; A delinquent debt owed to a cable company in the amount of \$207; A delinquent debt owed to a creditor in the amount of \$375; A delinquent debt owed to a gas company in the amount of \$134; A delinquent debt owed to a creditor in the amount of \$206; A delinquent debt owed to a cable company in the amount of \$241; A delinquent debt owed to a telephone company in the amount of \$106; A delinquent debt owed to a creditor in the amount of \$413; A delinquent debt owed to a creditor in the amount of \$526; A delinquent debt owed to a creditor in the amount of \$1,221; A delinquent credit card debt in the amount of \$1,001; A delinquent credit card debt in the amount of \$630; A delinquent credit card debt in the amount of \$974; A delinquent debt owed to a cable company in the amount of \$242; A delinquent debt owed to a utility company in the amount of \$248; A delinquent debt owed to a creditor in the amount of \$624; A delinquent debt owed to a state in the amount of \$531; A delinquent credit card debt owed to a creditor in the amount of \$375; A delinquent debt owed to a creditor in the amount of \$64.

In August 2013, Applicant hired a credit counseling firm to assist him in resolving his debt. (Applicant's Exhibit 2.) He included each of the delinquent debts set forth in subparagraphs 3.c., through 3.j., and 3.m., through 3.t, in his repayment schedule. (Government Exhibit 4.) Applicant also submitted a copy of a refund check for one of the debts owed to Midland Credit. (Applicant's Exhibit 1.) This shows some progress. He did not include his debt for restitution still owing in the amount of \$12,170, as a result of the theft at the volunteer fire department. Of the debts that he included in the repayment schedule, they will not be paid in full for three years.

Applicant provided documentation showing that he has been making child support payments that are automatically deducted out of his payroll check. He has also been an active and involved father in the lives of his children, and has done his best to provide for their care and well being. (Applicant's Exhibits 5, 6, 7, 8, 9 and 10.)

## **POLICIES**

Enclosure 2 and Section E.2.2. of the Directive set 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 J (Criminal Conduct)

30. *The Concern.* Criminal activity creates a doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

#### Conditions that could raise a security concern:

31.(a) a single serious crime or multiple offenses; and

31.(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

#### Conditions that could mitigate security concerns:

None.

### 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.

#### Conditions that could raise a security concern:

16.(a) a deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

16.(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, questionable judgment, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

#### Conditions that could mitigate security concerns:

None.

## 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:

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; and

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.

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;
- 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 criminal conduct, dishonesty and financial indebtedness that 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 continued 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 engaged in criminal conduct (Guideline J), dishonesty (Guideline E) and financial indebtedness (Guideline F) and the totality of this evidence indicates 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. Considering all of the evidence, Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guidelines J, E, and F of the SOR.

Applicant's long history of criminal activity has not been mitigated. Under Guideline J, Criminal Conduct, Disqualifying Conditions 31.(a) *a serious crime or multiple lesser offenses*, and 31.(c) *allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted* apply. None of the mitigating conditions are applicable. Applicant's criminal activity includes a felony conviction in 1991, a General Court Marital in 1992, a theft of over \$18,000 in 2002-2003, and a DWI conviction in 2008, which casts serious doubts on Applicant's reliability, trustworthiness, and good judgment. Regardless of whether he was arrested, charged or not, this conduct shows an on going pattern of behavior that started as a young man and has continued well into his adulthood. Each time he engaged in criminal conduct, he was serving in a position of trust granted to him by his employer, or with whom he was a trusted volunteer. This long dysfunctional criminal history establishes a dysfunctional lifestyle pattern and it cannot be said with certainty that it will not continue and recur. There is insufficient evidence of successful rehabilitation at this time. Accordingly, I find against Applicant under Guideline J, Criminal Conduct.

Equally as troubling in this case is the fact that Applicant was untruthful concerning his military discharge on his security clearance application. He deliberately concealed material information from the Government. There is no excuse for this misconduct. The Government relies on the representations of its defense contractors and must be able to trust them in every instance. Applicant made no prompt, good-faith effort to correct his mistakes. Applicant cannot at this time be deemed sufficiently trustworthy. In fact, he has demonstrated unreliability and untrustworthiness. Under the particular facts of this case, his poor personal conduct is considered a significant security risk, which prohibits a favorable determination in this case.

Under Guideline E, Personal Conduct, Disqualifying Conditions 16.(a) *a deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*, and 16.(c) *credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, questionable judgment, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information* apply. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline E, Personal Conduct.

It is recognized that in 2013 Applicant hired a credit counseling firm to assist him in resolving his delinquent debts and that he has been working toward that goal since then. However, given the extent of his indebtedness, and the fact that his repayment plan does not address his large restitution debt that remains owing in the amount of \$12,170, he remains excessively indebted and will continue to be so for some time in the future. There is some evidence that circumstances beyond Applicant's control, and through no fault of his own, caused his financial problems. Namely, his two divorces and



possibly a fathering a child out of wedlock. These occurrences brought unexpected expenses that contributed to Applicant's financial hardship. However, Applicant has been slow at climbing out of debt, and at this time continues to remain excessively indebted.

Applicant has not clearly demonstrated that he can properly handle his financial affairs. There is insufficient evidence of financial rehabilitation. Considering all of the evidence, Applicant has failed to introduce persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

In regard to 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. I considered, 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*; 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*. Under the particular facts of this case, they are not controlling. Applicant still remains excessively indebted. Accordingly, I find against Applicant under Guideline F (Financial Considerations.)

I have also considered the "whole-person concept" in evaluating Applicant's eligibility for access to classified information. Applicant is a 47-year-old man who has made some very poor choices in his life that do not immediately go away. He must demonstrate over a sustained period of time that he can be honest and trustworthy as well as financially responsible. His long history of misconduct is a future indicator of poor judgment and unreliability that preclude him from security clearance eligibility at this time.

Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole supports a whole-person assessment of poor judgment, 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.

A security clearance is a privilege, not a right. In order to meet the qualifications for access to classified information, it must be determined that the applicant is and has been sufficiently trustworthy on the job and in his everyday life to adequately protect the Government's national interest. Overall, based upon the seriousness of the conduct outlined here, this Applicant has not demonstrated that he is sufficiently trustworthy, and without such, he does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline J (Criminal Conduct), Guideline E (Personal Conduct), and Guideline F (Financial Considerations.)

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1, 2 and 3 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: Against Applicant.

- Subpara. 1.a.: Against Applicant.
- Subpara. 1.b.: Against Applicant.
- Subpara. 1.c.: Against Applicant.
- Subpara. 1.d.: Against Applicant.

Paragraph 2: Against Applicant.

- Subpara. 2.a.: Against Applicant.
- Subpara. 2.b.: Against Applicant.

Paragraph 3: Against Applicant.

- Subpara. 3.a.: Against Applicant.
- Subpara. 3.b.: Against Applicant.
- Subpara. 3.c.: Against Applicant.
- Subpara. 3.d.: Against Applicant.
- Subpara. 3.e.: Against Applicant.
- Subpara. 3.f.: Against Applicant.
- Subpara. 3.g.: Against Applicant.
- Subpara. 3.h.: Against Applicant.
- Subpara. 3.i.: Against Applicant.
- Subpara. 3.j.: Against Applicant.
- Subpara. 3.k.: Against Applicant.
- Subpara. 3.l.: Against Applicant.
- Subpara. 3.m.: Against Applicant.
- Subpara. 3.n.: Against Applicant.
- Subpara. 3.o.: Against Applicant.
- Subpara. 3.p.: Against Applicant.
- Subpara. 3.q.: Against Applicant.
- Subpara. 3.r.: Against Applicant.
- Subpara. 3.s.: Against Applicant.
- Subpara. 3.t.: Against Applicant.
- Subpara. 3.u.: Against Applicant.
- Subpara. 3.v.: Against Applicant.
- Subpara. 3.w.: Against 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 Applicant.

Darlene Lokey Anderson  
Administrative Judge