



**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. 15-00552

**Appearances**

For Government: Jeff A. Nagel, Department Counsel  
For Applicant: Gregory A. Montegna, Attorney At Law

August 5, 2016

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIPs) March 14, 2014. (Government Exhibit 1.) On August 27, 2015, 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 the DOD 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.

Applicant responded to the SOR on September 28, 2015, and he requested a hearing before a Defense Office of Hearings and Appeals (DOHA) Administrative Judge. This case was assigned to this administrative judge on March 15, 2016. A notice of hearing was issued March 22, 2016, and the hearing was scheduled for April 27, 2016. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6. The Applicant presented no exhibits, but called four witnesses to testify. He also testified on his own behalf. Applicant requested that the record remain open in order to submit additional documentation. The record remained

open until close of business on May 10, 2016. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. The official transcript (Tr.) was received on May 9, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

Applicant is 39 years old and is married with one step-child. He has a high school diploma and some college. He is employed with a defense contractor as a Customer Technical Representative 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.

There are nine delinquent debts set forth in the SOR. Applicant admitted each of the allegations set forth in the SOR under this guideline. Credit reports of the Applicant dated April 18, 2014; December 13, 2014; November 6, 2015; and April 23, 2016; which include all three credit reporting agencies, reflect that he was indebted to each of the creditors set forth in the SOR in an amount totaling in excess of \$50,000. (Government Exhibits 3, 4, 5, and 6.) Applicant has been working for his current employer since July 2003. He has held a security clearance since then and has never incurred a security violation.

Applicant explained that about in 2006, after he got married, his mother-in-law passed away, and he and his wife instantly took over the responsibilities of handling the in-laws' real estate holdings. Although both of his in-laws names were on the deed to the properties, his father-in-law had left and moved out of the country, and did not know how to handle the finances anyway. This included paying the mortgages on their house and rental properties. Applicant and his wife had no experience at managing property. Applicant encountered a situation where a tenant was not paying the rent and so he had to use his own funds to try to maintain the payments. On occasion, he fell short. At the time, Applicant's wife did not have steady employment. In 2010, Applicant contacted a bankruptcy attorney for advice and was told to stop paying his bills. He later contacted a family friend, who is also an attorney, who told him not to file bankruptcy because it might negatively affect his security clearance. For at least five years, Applicant did little or nothing to resolve his debts, and things spiraled out of control.

The following delinquent debts became owing:

1.a. A delinquent credit card debt owe to a bank that was charged off in the approximate amount of \$35,256. Applicant states that he is not paying the debt because it is old, there has been no legal action ever taken, and the statute of limitations has expired. Recently he has tried to contact the creditor to work out a payment plan. (Tr. p. 39.) Post hearing, Applicant filed for Chapter 13 Bankruptcy and included this debt in the petition.

1.b. A delinquent credit card debt owed to a department store that was charged off in the approximate amount of \$5,795. Applicant contends that this debt also falls within the provisions of the statute of limitations. Recently he has tried to contact the creditor to work out a payment plan. (Tr. p. 40.)

1.c. A delinquent credit card debt owed to a creditor that was charged off in the approximate amount of \$4,216. Applicant contends that this debt also falls with the provisions of the statute of limitations. Recently, he has tried to contact the creditor to work out a payment plan. (Tr. p. 41.)

1.d. A delinquent debt owed to a creditor that was placed for collection in the approximate amount of \$2,404. Applicant contends that this debt also falls within the provisions of the statute of limitations. Applicant has not contacted the creditor to set up a payment plan. (Tr. p. 41.)

1.e. A delinquent debt owed to a bank that was placed for collection in the approximate amount of \$2,232. Applicant contends that this debt also falls within the provisions of the statute of limitations. Applicant has not contacted the creditor to set up a payment plan. (Tr. p. 42.)

1.f. A delinquent debt owed to a creditor that was placed for collection in the approximate amount of \$1,665. Applicant has not contacted the creditor to set up a payment plan. (Tr. p. 42.)

1.g. A delinquent credit card debt owed to a bank that was charged off in the approximate amount of \$807. Applicant has not contacted the creditor to set up a payment plan. (Tr. pp. 42 - 43.)

1.h. A delinquent credit card debt that was placed for collection in the approximate amount of \$464. Applicant has not contacted the creditor to set up a payment plan. (Tr. p. 43.)

1.i. A delinquent department store account that was charged off in the approximate amount of \$399. Applicant has not contacted the creditor to set up a payment plan. (Tr. p. 44.)

Applicant's attorney has tried to contact some of the creditors. Applicant cancelled all of his credit cards. He is taking credit counseling classes to help him reduce his expenses.

Three character witnesses testified on the Applicant's behalf. His pastor, who performed Applicant's marriage ceremony, and who has known him for fifteen years, stated that he knew about the Applicant's financial problems. Even so, he believes that the Applicant has been very responsible and of good moral character. He has helped at the church in various ways, for example, helping with developing programs for young people at the church and assisting in those activities. Applicant's co-worker, who has worked with the Applicant for the past four years, testified that Applicant is of good moral character. He further stated that Applicant provides service and support to the United States Navy and he does not believe that Applicant is a security risk to the United States Government. A friend and business owner, who has known the Applicant for thirteen years, testified that he believes Applicant to be honest, very responsible, a devout Christian, and not a risk to the United States. (Tr. pp. 59-70.)

Applicant's wife testified that they tried to file bankruptcy in the past but did not do so because of her husband's job. She also stated that the debts were not her husband's, but that she incurred them alone, and that she takes full responsibility for them. (Tr. p. 73.) She did not walk away from her parents' debt because she did not want to disappoint them, and because their properties were her own daughter's inheritance. (Tr. p. 75.) She stated that her husband is a good man and good husband. (Tr. p. 72-76.)

Applicant's Post-Hearing Exhibit A indicates that he filed for Chapter 13 Bankruptcy on May 10, 2016. It states that Applicant's petition for Bankruptcy was prepared and ready to file several years ago. Upon completion of the Bankruptcy, all debt will be paid, discharged, or otherwise resolved.

Letters from Applicant's attorney to various creditors confirm that some contact was initiated. (Applicant's Post-Hearing Exhibit A.)

## **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.

Condition 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). 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 spiraled out of control in 2006 after his mother-in-law passed away. Although they could not afford to do so, he and his wife decided to take over their in-laws finances and real estate holdings. Applicant had no experience in property management, did not know what to do when a tenant failed to pay the rent, and did not have financial resources available to cover the expenses. As a result, they became excessively indebted. They failed to pay the debts

and they remain owing. On May 10, 2016, Applicant filed for Chapter 13 Bankruptcy to resolve his delinquent debts. (Applicant's Post-Hearing Exhibit A.)

Applicant's history of excessive indebtedness, without sufficient mitigation, demonstrates a pattern of unreliability and poor judgment. Applicant provided some proof of payment, and some documentation to demonstrate that he resolved some of his delinquent debts. However, the point here is that the Applicant has not shown that he is reasonable, responsible or uses good judgment. 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 financially responsible. There is evidence to show that Applicant has received credit counseling.

Under the particular circumstances of this case, 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. His pattern of financial irresponsibility does not demonstrate that he can properly handle his financial affairs. His delinquent debts remain 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 sometime in the future. However, he is not eligible now. 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 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. It can be argued that Mitigation Condition 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, because of his mother-in-laws death. However, this mitigation condition is not controlling. Applicant has not acted responsibly under the circumstances. He took on financial obligations that were not his own, and fell behind on his own debts. Applicant could benefit from intense financial counseling. In this case, 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 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 Applicant has not 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 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.

### **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