



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02093

Appearances

For Government: Andrew Henderson, Department Counsel
For Applicant: *Pro se*

July 21, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIPs) June 19, 2012. (Government Exhibit 1.) On October 26, 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 November 16, 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 February 1, 2016. A notice of hearing was issued February 17, 2016, and the hearing was scheduled for March 4, 2016. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7. The Applicant presented five exhibits, referred to as Applicant's Exhibits A through E. 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 March 14, 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 March 14, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 57 years old and is divorced with three adult children. He has a Master's degree in Computer Science. He is employed with a defense contractor as a Principal Software Engineer 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 seven 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 July 14, 2007; June 21, 2012; September 25, 2015; and January 27, 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 \$100,000. (Government Exhibits 3, 4, 5 and 6.)

Applicant has been working for his current employer in the defense industry since September 2004. He is also employed as an adjunct professor at a state university teaching engineering since September 2007. He has held a security clearance since 1983. He has never violated company or security policies. Applicant was married from 1983 to 2011. He and his wife separated in 2004. Applicant moved into an apartment. To keep his wife in the house with the children and provide her with the things she needed because she was in college, they frequently used credit cards to live on. At one time they had at least 20 credit cards open. As his wife would "max out" an older credit card, they would open a new one, and on and again with unending credit. (Tr. p. 34.) Applicant states that he was also paying alimony and child support in the amount of \$3,500 monthly. (Tr. p. 63.) As time passed, they incurred a massive amount of debt. Applicant stated that he tried to pay the credit cards as best he could. He started working overtime, and got a second job as an adjunct professor to help pay the bills. When they divorced in 2011, Applicant's wife wanted to keep the house and get the children through college. In order to qualify to buy the house on her own, Applicant took on all of the debt from the marriage, which was mostly consumer credit card debt. (Tr.

p. 23.) Applicant then decided he would contact a debt management company to help him pay it off.

Upon hiring the debt management company, Applicant paid \$3,000 to start the process and \$1,000 monthly. He soon realized that they were not doing anything to help him, and his debt went into collection. Creditors were calling, and by that point, most of his debt was starting to go into charge-off status, and his credit rating was going down. (Tr. p. 24.) The following debts, mostly consisting of credit card debt, became delinquent and owing:

1.a. A delinquent credit card debt owe to a bank that was charged off in the approximate amount of \$49,639. This debt is the same debt as that listed in allegation 1.f. Applicant claims that he had set up an arrangement to have the creditor paid by taking \$400 dollars automatically out of his checking account each month. At some point, this stopped. Applicant recently restarted the payments that are now due on the 15th of each month and will continue until the debt is paid in full. (Applicant's Post-Hearing Exhibit A.) He believes that he currently owes the creditor about \$24,300. (Tr. p. 43)

1.b. A delinquent credit card debt owed to a bank that was charged off in the approximate amount of \$5,503. Applicant claims that he made monthly payments of \$205 dollars monthly until the debt was paid in full. (Tr. p. 45.) Applicant is currently waiting for a letter from the creditor to show that the debt has been paid in full. (Applicant's Post-Hearing Exhibit A.)

1.c. A delinquent credit card debt owed to a creditor that was charged off in the approximate amount of \$21,086. Applicant has paid the debt in full. (Tr. p. 47.) Applicant claims that he made payments of \$400 monthly until the debt was paid in full. (Tr. p. 49.)

1.d. A delinquent debt owed to a creditor that was placed for collection in the approximate amount of \$4,302. Applicant made payments of \$200 monthly until the debt was paid in full. (Tr. p. 49.)

1.e. A delinquent debt owed to a bank that was placed for collection in the approximate amount of \$9,268. Applicant settled the debt for \$3,500 and the debt been paid off. (Applicant's Exhibit C.)

1.f. A delinquent debt owed to a creditor that was placed for collection in the approximate amount of \$55,000. This is the same debt as that listed in allegation 1.a.

1.g. A delinquent debt owed to a creditor that was placed for collection in the approximate amount of \$7,500. Applicant claims that his wife paid this debt off when she sold the house. (Tr. p. 54.) Applicant has provided a copy of the Acknowledgment of Satisfaction of Judgement dated May 6, 2011, showing that the debt was paid in full. (Applicant's Post-Hearing Exhibit A.)

There was another delinquent credit card account the Applicant has been paying on and has completely resolved in the amount of \$13,000. (Tr. pp. 55-56 and Applicant's Exhibit D.)

Applicant presented a copy of his most recent credit report which shows a FICO score of 667, indicating to him that it has recently improved by 45 points. (Applicant's Exhibit E.) Applicant testified the he currently has three credit cards with zero debt on them. (Tr. p. 64.) He is also currently paying alimony in the amount of \$2,700 monthly. At the end of the month he has about \$300 left in discretionary funds. He has a 401(K) that contains about \$75,000. (Tr. p. 66.) Applicant recognizes his mistakes in the past and has no intention of engaging in these wild financial practices in the future.

Work performance appraisals of the Applicant for the years 2013, 2014 and 2015 indicate ratings that show that he either "achieved excellence" or "exceeded expectations" in every category. (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 were incurred by reckless spending. His divorce obviously contributed to some of his financial indebtedness, however, the way he chose to handle the situation aggravated his financial problems even more. Applicant made a series of poor decisions that have negatively effected his finances. He and his ex-wife used credit cards to maintain the lifestyle they were accustomed to, even after they separated, and while they were trying to maintain the expense of two households. To keep his wife and children in the house they grew up in and to allow his wife to go to college instead of work, Applicant took on lots of credit card debt. When they maxed out one credit card, they would open another. Applicant did not live within his means, as he could not afford to pay these debts. He even worked overtime and took on a teaching job at a university. Recently he has been focused on resolving his debts. This history of reckless spending shows irresponsibility. At this point, he remains excessively indebted to at least one of the creditors for about \$24,000, and just set up a payment plan to restart payments to resolve the debt.

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. 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, 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 reckless spending, followed by recent efforts to clean up his credit, does not demonstrate that he can properly handle his financial affairs or that he is fiscally responsible. 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 divorce. However, this mitigation condition is not controlling. Applicant has not acted responsibly under the circumstances. He continued to spend money he did not have, and abused the credit card system in the process. 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	For the Applicant.
Subpara. 1.c.	For the Applicant.
Subpara. 1.d.	For the Applicant.
Subpara. 1.e	For the Applicant.
Subpara. 1.f.	Against the Applicant.
Subpara. 1.g.	For 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