



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



In the matter of: )  
)  
) ISCR Case No. 15-02666  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis, Department Counsel  
For Applicant: *Pro se*

October 18, 2016

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on July 1, 2014. (Government Exhibit 1.) On March 18, 2016, 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 Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR on April 12, 2016, and he requested a hearing before a Defense Office of Hearings and Appeals Administrative Judge. This case was assigned to this Administrative Judge on May 23, 2016. A notice of hearing was issued on June 16, 2016, scheduling the hearing for July 8, 2016. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant presented thirteen exhibits, referred to as Applicant's Exhibits A through M, which were admitted without objection. He also testified on his own behalf. The official transcript (Tr.) was received on July 15,

2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

Applicant is 58 years old, and is married with two biological children. He has a Master's degree in Information Technology, and is employed for a defense contractor as a Information Technology Specialist. He 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 fifteen delinquent debts set forth in the SOR totaling approximately \$40,000. Applicant admitted allegations 1.a., through 1.i., under this guideline. He denied allegations 1.j., through 1.o., as he believes that they are not his debts. Credit reports of the Applicant dated July 15, 2014; October 6, 2015; and May 16, 2016, which includes information from all three credit reporting agencies, indicate that Applicant is indebted to each of the creditors listed in the SOR. (Government Exhibits 4, 5, and 6.)

Applicant served in the United States Marine Corps from January 1978 to August 1981 and then received an honorable discharge. In May 2014, he began working for his most recent employer. About nine months ago, he purchased a house. (Applicant's Exhibit G.) His plan was to build some equity in the house, so he could borrow on it, and pay off his delinquent debts. When his interim clearance was declined, he was separated from his employment on June 25, 2016. (Applicant's Exhibit B.)

Applicant has had a long history of financial difficulties caused by a series of bad business decisions, and unfortunate life situations. He states that he was very successful in the Marine Corps and following that, in law enforcement, as an Assistant Chief of Security for a defense contractor. He left the defense industry, and pursued a radio disk jockey job for five years, before starting his own security company in 1991. From 1991 to 1997 his security business was good. It paid the bills, and he filed his income tax returns. In 1997, a large corporation came in and undercut all of his contracts, and he could not compete. He had to close his business. In addition, two of his employees were involved in shootings and this brought on lawsuits.

Following this, Applicant was in and out of work for extended periods, and he experienced medical issues with his ankle and skin that prevented him from working. His first wife separated from him, and then divorced him, requiring alimony and child

support payment. He did not have the money to file his income tax returns or pay is taxes, and so he did not file them. Allegations 1.a., 1.b., and 1.c., indicate that he failed to file his federal income tax returns for tax years 2005 through 2012 as required. He also failed to file his state tax returns for tax years 1996 through 1999, and 2005 through 2012. Applicant states that he did not know that filing tax returns was mandatory. (Tr. pp. 55-57.) In February 2014, Applicant hired a tax preparation firm to assist him in getting his unfiled income tax returns filed. He could not afford to pay them the \$3,000 up-front money to start the program, and so nothing was initiated. (Tr. p. 70.)

Presently, Applicant states that he has filed all of the income tax returns in question and is up to date on his tax filings. (Applicant's Exhibits L and D.) He believes that he currently owes the IRS a total of approximately \$29,000 for tax years 2005 through the present. Allegations 1.d., 1.e., 1.f., and 1.g. indicate that he is indebted to the IRS for tax liens entered against him in the following years: 1997 in the approximate amount of \$21,536; \$9,749 for tax year 2004; \$4,102 for tax year 2005; and \$2,268 for tax year 2006. He set up a payment arrangement with the IRS to pay them \$125 monthly. (Applicant's Exhibit K and Tr. p. 68.) This arrangement started in October 2015. The Federal tax lien will not be removed until the debt is paid in full.

Allegations 1.h., and 1.i. indicate that he owes delinquent taxes to the state in the approximate amount of \$27,946 for tax years 1996 through 1999, 2006, 2007 and 2010. Applicant states that he believes he currently owes the state a total of approximately \$24,000 from tax years 1996 through the present. (Tr. p. 66.) These state tax liens will not be removed until the debt is paid in full. He has not yet addressed the state delinquent taxes. (Government Exhibit 3.)

Applicant testified that his last paycheck from his employer was levied by the state in the amount of \$2,500 for back taxes owed to the state. (Tr. p. 73.) He current finances are tight as he is finding it difficult to pay is bills, and is having to borrow from friends and family. He has no monies available in his checking or savings account.

Applicant admits that he also owes the Government in excess of \$100,000 in student loans for his Master's degree. (Tr. p. 76.) He explained that allegation 1.j., a delinquent debt owed to a creditor that was placed for collection in the approximate amount of \$3,873, is the cost of a class he had to repeat. (Tr. p. 78.) Applicant does not have the money to pay the debt at this time. He recently filed for forbearance on his student loans for 90 days. He states that he cannot receive his degree until the debt for the class is paid. (Tr. p. 79.)

Applicant contends that the medical bills set forth in 1.k., 1.l., 1.m., 1.n., and 1.o, are someone else's debts. (Tr. p. 81.) These accounts were placed for collection in the approximate amounts of \$1,281; \$197; \$858; and \$92. He believes that in 2006 he was a victim of identity theft. When he saw his credit report, he noticed a number of inaccurate information that was not his. Applicant has recently enrolled with a credit repair program and they are disputing these debts. (Applicant's Exhibit I.) They are

working to remove any delinquent accounts that are not his that are inaccurately reflected on his credit report. (Applicant's Exhibit F and Tr. p. 82.)

Letters of recommendation submitted on Applicant's behalf from his professional associates and friends, some of whom have only known him for several years, others who have known him over ten years, all collectively agree that he is mature, motivated, ethical, moral, and knowledgeable. He is described as a team player, hard worker, dependable and efficient. He is considered to be a valuable asset to their office and department, and is recommended for a security clearance. (Applicant's Exhibit C.)

## **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;

19.(c) a history of not meeting financial obligations; and

19.(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

#### 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;

- 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 that 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, 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 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 presented shows that Applicant failed to file his income tax returns beginning in 1996, which continued off and on over the years. Over time he incurred an enormous tax debt owed to the state and the Federal government. He is slowly paying the Federal government the back taxes he owes. This may take some time given the fact that he only pays \$125 monthly towards this debt of at least \$29,000. He has not begun to pay the \$24,000 he owes in state back taxes. He also owes student loans in excess of \$100,000. He cannot afford to pay even the smallest debt he owes for the class he took in the amount of \$3,800. Not to mention a number of medical bills he claims are not his. Given his financial situation, he is unable to pay his delinquent debts. It appears that even his regular monthly expenses may soon fall delinquent. Without compelling documentation showing that Applicant has made financial arrangements and followed these arrangements to meet his past due financial obligations, he has not shown the requisite good judgment or reliability that is necessary in order to be eligible for access to classified information.

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 set forth in the SOR. His paycheck was recently levied by the state for back taxes, which should tell him something. Nonetheless, 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. Thus, Applicant has not demonstrated that he can properly handle his financial affairs. He must demonstrate a history and pattern of financial responsibility, including the fact he has not acquired any new debt that he is unable to pay. 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. None of the mitigating conditions are applicable. Applicant started working for his current employer in May 2014. He immediately purchased a house when

he knew he owed excessive back taxes to the IRS and the state. Creating more debt before you pay off your old debt does not show good judgment. This does not demonstrate reasonableness, prudence, or responsibility. It cannot be said that he has made a good-faith effort to satisfy his delinquent debts. In fact, he has shown that he is not financially responsible. 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. 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, 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 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 Paragraph 1 of the SOR.

## **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph E3.1.25 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.
Subpara.	1.e.	Against Applicant.
Subpara.	1.f.	Against Applicant.
Subpara.	1.g.	Against Applicant.
Subpara.	1.h.	Against Applicant.
Subpara.	1.i.	Against Applicant.
Subpara.	1.j.	Against Applicant.
Subpara.	1.k.	Against Applicant.
Subpara.	1.l.	Against Applicant.
Subpara.	1.m.	Against Applicant.
Subpara.	1.n.	Against Applicant.
Subpara.	1.o.	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. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge