



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



In the matter of:

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) ISCR Case No. 15-03111  
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Applicant for Security Clearance

**Appearances**

For Government: Carroll J. Connelley, Department Counsel  
For Applicant: *Pro se*

February 3, 2017

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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 September 8, 2014. (Government Exhibit 2.) On January 17, 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) detailing the security concerns under Guideline 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 February 13, 2016, and 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 Applicant on or about March 16, 2016. Applicant received the FORM on March 23, 2016. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant submitted a reply to the FORM. Department Counsel had no objection and it was admitted into evidence. This case was assigned to the

undersigned on December 1, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

## **FINDINGS OF FACT**

The Applicant is 55 years old and married a third time with five adult children. He has a high school diploma. He holds the position of Senior Test Engineer for a defense contractor. He 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 admitted the allegations set forth in the SOR under this guideline. Credit Reports of the Applicant dated September 13, 2014; and March 19, 2015, reflect that Applicant was at one time indebted to each of the creditors set forth in the SOR, in an amount totaling in excess of \$35,000. (See Government Exhibits 4 and 5.)

Applicant served in the United States Navy from 1980 to 1985, when he was honorably discharged. He has been married twice before, and was married a third time in 2008. He has worked for his current employer since 2004. In 2012, Applicant's wife lost her job, and their household income was reduced by \$50,000 per year. Applicant's wife could not find employment until the spring of 2014, when she found part-time employment. It was not until February 2015 when she secured a full time job. Applicant's wife's unemployment caused financial difficulties for the Applicant since the family relied on both incomes to sustain their needs. While his wife was unemployed, Applicant continued to pay the mortgage, insurance, car payments, electricity, etc, but payments to creditors fell behind. Applicant's real problems began when his wife's unemployment benefits ran out, which cut them down to one income. Applicant then used credit cards to purchase the every day items needed to sustain his household. As a result, Applicant became financially overextended.

The following four debts listed in the SOR became delinquent. Each of the debts are credit cards that Applicant used to purchase necessities for the family, such as groceries, gas, clothing, and household supplies. Applicant accepts responsibility for his debt and he plans to pay it off. He has no plans of filing bankruptcy.

1.a. A delinquent credit card account was charged off in the amount of approximately \$12,661. In July 2014, Applicant started making regular monthly payments of \$10 toward the debt. Since filing his answer to the SOR, Applicant has paid a total of \$113

toward the debt. The balance has been minimally reduced to \$12,566.48. Applicant states that he has been unable to increase the payment at this time due to a spousal support payment of \$400 he makes to his ex-wife, which will end in June 2016. At that point, Applicant will increase his monthly payment to \$200, until the debt is paid in full.

1.b. A delinquent credit card account was charged off in the amount of approximately \$11,137. In July 2014, Applicant started regular monthly payments of \$10 toward the debt. Since filing his answer to the SOR, Applicant has paid a total of \$113 toward the debt. Applicant states that he has been unable to increase the payment at this time due to a spousal support payment of \$400 he makes to his ex-wife, which will end in June 2016. At that point, Applicant will increase his monthly payment to \$200, until the debt is paid in full.

1.c. A delinquent credit card account was charged off in the amount of approximately \$6,229. Applicant entered into a verbal agreement with the creditor in April 2015 to pay \$100 before the 30<sup>th</sup> of each month toward the current balance of \$5409.08. Applicant has complied with the arranged payment plan, and will continue to do so until the debt is paid in full.

1.d. A delinquent credit card account was charged off in the amount of approximately \$5,779. From April 2016 going forward, Applicant has made regular monthly payments \$165 on the current balance of \$4,737.52. He plans to continue to do so until the debt is paid in full.

Applicant states that he plans to increase his monthly payments to his creditors, as other debts get paid off or as funds become available. (Applicant's Reply to the FORM).

## **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:

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; and

20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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 excessive 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 had excessive 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 introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government’s case under Guideline F of the SOR.

The evidence shows that when Applicant’s wife lost her job in 2012, their comfortable two-income household went to one income, which caused financial difficulties. Even then, Applicant continued to pay his mortgage, insurance, car

payments and utilities without interruption. Only his credit card bills fell behind. But, they have been heavily charged up. Applicant owes a total of approximately \$34,000 in delinquent credit card debt. In February 2015, his wife became employed full time. Since then, the Applicant has set up payment plans with each of his creditors to resolve his delinquent debts. It is noted, however, that the monthly payments he has been making are very small, and it will take a significant amount of time to resolve them, if he does not make them a priority. At this time, Applicant has not made much progress in resolving his debts, but he has not completely neglected them, and he has demonstrated some level of responsibility. It can be assumed that going forward, the Applicant will increase his monthly payments to each of his creditors, as more discretionary income becomes available, and he will not incur any new debt, until these old debts has been completely resolved. In the event that Applicant fails to resolve his debts in a timely fashion, or if he incurs additional debt without resolving the old debt, his security clearance will be in immediately jeopardy. He understands that he must continue to live within his means at all times, if he is to be eligible for a security clearance. He also understands that he must be responsible in handling his finances.

Applicant has submitted documentary evidence to support the fact that he has been making payments to the creditors listed in the SOR. This compelling documentary evidence shows that he has acted reasonably and responsibly. He has shown good-faith by starting to repay his financial obligations. Based upon this documentation, there is sufficient evidence of financial rehabilitation. Considering all of the evidence, Applicant has introduced 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. However, 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*; and 20.(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, are also applicable. Accordingly, I find for Applicant under Guideline F (Financial Considerations).

I have also considered the "whole-person concept" in evaluating Applicant's eligibility for access to classified information. He has made a good-faith effort to resolve his debts, and he must completely resolve them as swiftly as he is capable. 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 good judgment, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may 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 now demonstrated that he is sufficiently trustworthy, and does meet the eligibility requirements for access to classified information. Accordingly, I find for Applicant under Guideline F (Financial Considerations).

On balance, it is concluded that Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 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: For Applicant.  
Subpara. 1.a.: For Applicant.  
Subpara. 1.b.: For Applicant.  
Subpara. 1.c.: For Applicant.  
Subpara. 1.d.: For Applicant.

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Darlene Lokey Anderson  
Administrative Judge