



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



In the matter of: )  
)  
) ISCR Case No. 15-05289  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Department Counsel  
For Applicant: *Pro se*

October 19, 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-QIP) on October 24, 2014. (Government Exhibit 1.) On April 1, 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 DOHA 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 answered the SOR in writing on April 16, 2016, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals. The case was assigned to the undersigned Administrative Judge on May 31, 2016. A notice of hearing was issued on June 15, 2016, scheduling the hearing for July 7, 2016. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were received without objection. Applicant offered four exhibits, referred to as Applicant's Exhibits A through D, which were admitted without objection. He also testified on his own behalf. The record remained open until close of business on July 21, 2016, to allow Applicant to submit additional documentation. Applicant

submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. The transcript of the hearing (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**

The Applicant is 28 years old, and unmarried. He has a GED. He is employed with a defense contractor as a Magnetic Particle Inspector and 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 B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts, which could create the potential for foreign influence that could result in the compromise of classified information.

Applicant was born in the United States of Mexican heritage in 1988. He grew up here, and dropped out of high school in the twelfth grade. Five years later, in October 2011, he decided to obtain his GED. He worked for Wendy's hamburgers off and on from June 2004 until January 2012. He then went to work for another company before starting with his current employer in June 2014. He has never violated company rules or regulations. He has a valid state driver's license that expires in May 2018.

Applicant provides all of the financial support for he and his mother. His mother was born in Mexico, and is a citizen of Mexico, who illegally came to the United States in 1988. (Applicant's Exhibit D.) She resides with the Applicant. She has remained in the United States, is unemployed, and has never taken any steps to become legal. Applicant would like to help her with legalization, but he does not have the money to do so. He testified that he and his mother have no contact with anyone in Mexico, nor do they have any plans to ever return to Mexico. Applicant hopes to help his mother become a legal alien before the end of the year. (Tr. p. 56.) His mother was once employed at Jack in the Box for several years when the Applicant was younger, but has never worked anywhere else.

Paragraph 2 (Guideline F - Financial Considerations) The Government alleges that the Applicant is ineligible for a security clearance because he is financially overextended and at risk of having to engage in illegal acts to generate funds.

Applicant admits allegations set forth in subparagraphs 1.(a)., 1(b)., and 1.©. He denies allegations 1.(d)., 1(e)., and 1(f), of the SOR under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated November 11, 2014;

and February 24, 2016, reflect that the Applicant is indebted to four creditors in an amount totaling in excess of \$2,800, and that he failed to file his Federal and state income tax returns for tax year 2013. (Government Exhibits 3 and 4.)

Applicant stated that in 2009 he was working at Wendy's part-time and for another company full-time, which was his main source of income. He was laid off of his job at the company and did not earn enough to pay his bills. The following delinquent debts became owing; 1.(a), a delinquent a credit card account placed for collections in the approximate amount of \$2,161 remains owing. Applicant stated that he last paid on the debt in 2009. He has not had any contact with the creditor since 2013. He states that he plans on paying the debt. 1.(b), a pay day cash advance loan account in the amount of \$315 remains owing. 1.(c), a delinquent debt owed to an insurance company for an account placed for collection in the amount of \$180 remains owing. 1.(d), a delinquent debt owed to cellular telephone company that was placed for collection in the amount of \$150 has been paid. Applicant explained that he co-signed for a friend, the friend failed to pay the bill, and the creditor came after the Applicant for payment. Applicant paid the bill in February or March 2014. (Applicant's Exhibit A, and Tr. p. 38.) Applicant also entered a consolidation program that he did not complete because he was laid off in February 2014.

He failed to file his Federal and state income tax returns for tax year 2013 on time. (Allegations 1.e., and 1.f.) He eventually filed them both in April 2015. (Applicant's Exhibit B.) He stated that he did not file them on time because he did not have the money to pay the taxes. He has since paid his tax liability. (Applicant's Exhibit B.) He takes care of his mother who is not a legal citizen. It gets hard for him to do. He has no other family to help him.

With his current employer, Applicant is paid on a weekly basis, and takes home approximately \$550 per week. He has no other sources of income. Each month he pays his rent of \$771, car insurance of \$87.91, \$150 to \$200 for his cell phone, and \$250 in credit cards. After food and toiletries, he spends about \$1,500. He recently finished making payments on his car and plans to start saving to pay other bills. Although he brings in more money than he spends, he states that he lives paycheck to paycheck. (Tr. p. 29.) In his retirement account he has about \$3,000. (Applicant's Exhibit C.) He has nothing in his savings account at the bank.

## **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:

## Foreign Influence

6. *The Concern.* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

### Conditions that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

7. (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and

7. (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

### Condition that could mitigate security concerns:

8. (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

## 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 obligation; and

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

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 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 . . . 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 subject to foreign influence, and have financial considerations that demonstrate 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.

Applicant's mother is a citizen of Mexico, who illegally resides in the United States with the Applicant. Applicant is her sole means of financial support. Applicant is extremely close to his mother, shown by his obvious dedication and loyalty to her, and the fact that there is no one else in the family to help him support her. Although Mexico is an ally of the United States, Applicant is in a unique situation where he could be a target to Mexican nationals and subjected to coercion or blackmail if his mother were subjected to deportation or other threats of harm. This poses a potential security risk to the United States. Under Guideline B, Disqualifying Conditions 7. (a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*, 7. (b) *connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that*

information; and 7. (d) *sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion* apply. Mitigating Condition 8. (b) *there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest* also applies, but is not controlling. Given the unique facts of this case, Applicant could be a potential target for foreign influence. Accordingly, Guideline B (Foreign Influence) is found against the Applicant.

Furthermore, the Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F). The 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.

Applicant's history of financial indebtedness has also not been mitigated. He remains excessively indebted. He has not started the process of resolving his debts. Applicant must show that he can and will resolve his debts. He has not shown an ability to pay all of his delinquent debts or live within his means. At this time, there is insufficient evidence of financial rehabilitation. Applicant has not demonstrated that he can properly handle his financial affairs. Little has changed with respect to the Applicant's finances. There is nothing in the record that demonstrates any change in his financial habits. Presently, Applicant remains excessively indebted, and his financial considerations have not been mitigated.

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*, 19.(g) *failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same* apply. Mitigating 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* arguably applies, but is not controlling. Three of the four delinquent debts remain owing, and nothing has been done since 2009 to resolve them. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

I have also considered the "whole-person concept" in evaluating the 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, supports 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 foreign influence and financial indebtedness, and the effects it can have on his ability to safeguard classified information. On balance, it is concluded that the Applicant has not overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 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.
Paragraph 2	Against the Applicant.
Subpara. 2.a.	Against the Applicant.
Subpara. 2.b.	Against the Applicant.
Subpara. 2.c.	For the Applicant.
Subpara. 2.d.	For the Applicant.
Subpara. 2.e.	For the Applicant.
Subpara. 2.f.	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