



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



In the matter of:

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) ISCR Case No. 15-06767  
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Applicant for Security Clearance

**Appearances**

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

November 29, 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 September 17, 2014. (Government Exhibit 1.) On April 19, 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 answered the SOR in writing on June 1, 2016, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals. On August 18, 2016, the case was assigned to the undersigned Administrative Judge for processing. A notice of hearing was issued on August 30, 2016, scheduling the hearing for October 12, 2016. The Government offered three exhibits, referred to as Government Exhibits 1 through 3, which were received without objection. Applicant presented eleven exhibits, referred to as Applicant's Exhibits A through K, which were also admitted without objection. Applicant testified on his own behalf. The record

remained open to allow Applicant to submit additional supporting documentation. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A. The transcript of the hearing (Tr.) was received on October 21, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **FINDINGS OF FACT**

Applicant is 54 years old, and married with three adult children. He has a high school diploma and attended trade school. He is employed as a Destruction Material Worker. 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.

Applicant served a short stint in the United States Army from June 1982 until October 1982. He received an honorable discharge. He has worked for his current employer since May 2003. He has held a security clearance since November 2003, and has never incurred a security violation. (Government Exhibit 1.)

Applicant admitted each of the allegations under this guideline. A combination of bad financial decisions, irresponsible spending, and circumstances beyond his control caused his financial problems. Credit reports of the Applicant dated December 12, 2014; and July 19, 2016, indicate that at one time he was indebted to each of the creditors listed in the SOR in an amount totaling approximately \$16,000. (Government Exhibits 2 and 3.)

In 2010 he was diagnosed with Hepatitis-C. (Applicant's Post-Hearing Exhibit A.) He was treated with chemotherapy and interferon injections. Although he worked the entire time, there were days when he would leave early because he felt sick, and he did not work a 40 hour week. He lost pay which impacted his ability to pay his bills. Applicant obtained a loan for \$20,000 to pay for his daughter's education, and \$7,000 to pay for his wife's education. He donated \$20,000 to his church. He also paid legal fees for his son's representation.

As time passed, his home that was originally purchased for \$63,000 had been mortgaged so high, he owed more than \$200,000. (Tr. p. 69.) Applicant's mortgage payments increased and he could not afford the payments. His house was eventually foreclosed upon, and other debts became delinquent. 1.a. He became indebted to a

bank for an account that was charged off in the amount of \$1,462. The final amount owed was \$2,193.98. Applicant agreed to settle the debt for \$1,096. He made three payments of \$365.66, and the debt was resolved in March 2011. (Applicant's Exhibits A and B.) 1.b. He became indebted to a creditor for an account that was placed for collection in the amount of \$766. Applicant paid the debt in full, which was taken from his income tax refund. (Applicant's Exhibit C.) 1.c. He became indebted to a creditor for an account that was placed for collection in the amount of \$47 which grew overtime to \$167. Applicant paid the debt in full on April 1, 2011. (Applicant's Exhibit D.) 1.d. He became indebted to a creditor for an account that was placed for collection in the amount of \$14,400. (Applicant's Exhibits F and H.) Applicant thought that this was a loan modification of his first mortgage, but was in fact a second loan on his home loan. He thought that the debt was cancelled with the first mortgage on this house. (See, Applicant's Exhibit G.) Applicant hired an attorney to look into the situation, but nothing was accomplished. (Applicant's Exhibit I.) Applicant set up a payment plan with the creditor of \$100 monthly that he will continue to pay until the debt is resolved. He states that he plans to pay the debt off when he receives his income tax refund. (Tr. p. 35.) 1.e. He became indebted to a creditor for an account that was placed for collection in the amount of \$466. Applicant settled the account for \$260 on May 15, 2015. (Tr. p. 48, Applicant's Exhibit K and Applicant's Post-Hearing Exhibit A.) In order to make sure that his credit report is updated to show his improvement, Applicant plans to contact each of the credit reporting agencies to inform them of his progress on the debts listed in the SOR. In the past, there has been some confusion with the collection agency records erroneously showing that a debt was not paid by the Applicant when in fact it was.

Applicant currently suffers from a chronic back condition which has been classified as an intermittent disability by his physician, and causes him to miss work when it flares up. His has been approved for leave from January 14, 2016, through January 13, 2017. He testified that now that he has resolved most of his past-due debts, he is still able to pay all of his regular monthly bills without difficulty.

## **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.(e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and /or other issues of security concern.

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; 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 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 shows that Applicant made some very bad financial decisions that involved some irresponsible spending. He was also confronted with some medical problems that caused him to miss work and lose pay. These things caused him to have serious financial problems that resulted in the foreclosure of his house and his delinquent debts. Applicant has now addressed each of the creditors listed in the SOR. He has

paid off all of the debts except the largest one, which he is making payments of \$100 monthly to resolve. He plans to pay it off when he receives his income tax refund. He realizes his mistakes of the past and now understands that they cannot recur.

Under the particular circumstances of this case, Applicant has met his burden of proving that he is worthy of a security clearance. He has a concrete understanding of his financial responsibilities and he has now either paid off the debt or is currently making payments to resolve them. He has incurred no new debt. Thus, it can be said that he has made a good-faith effort to resolve his past-due indebtedness. He has shown that he is or has been reasonably, responsibly, or prudently addressing the issues in this case. 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 (Financial Considerations), Disqualifying Conditions 19.(a) *inability or unwillingness to satisfy debts*; 19. (c) *a history of not meeting financial obligations*; and 19.(e) *consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other issues of security concern* apply. However, in this case, Mitigation 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*; and 20.(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* also apply. Applicant has paid off all but one of the debts, and is making payments to resolve it. He understands his obligation to continue to resolve his debts in a timely fashion in the future. 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. 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 good judgement, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

I have considered all of the evidence presented. It does mitigate the negative effects of his history of irresponsible spending and the effects that it can have on his ability to safeguard classified information. 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 the Applicant on the allegations in the SOR, as required by Paragraph E3.1.25 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.
Subpara.	1.e.	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. Eligibility for access to classified information is granted.

Darlene Lokey Anderson  
Administrative Judge