



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 14-03923  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Robert L. Kilmartin, Department Counsel  
For Applicant: *Pro se*

June 15, 2015

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (E-QIP) on April 3, 2013. (Government Exhibit 3.) On November 12, 2014, 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 her clearance should be denied or revoked.

Applicant responded to the SOR in writing on November 28, 2014, and 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 April 6, 2015. Applicant received the FORM on May 11, 2015. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant submitted a response to the FORM, which was admitted into evidence as Applicant's Exhibit A. This case was assigned to the undersigned on May 27, 2015. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is granted.

## FINDINGS OF FACT

Applicant is 55 years old, and married. She has a Bachelor's degree. She holds the position of Computer Security Analyst for a defense contractor. She 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 she 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. (See Applicant's Answer to SOR.) Applicant's Credit Report dated April 3, 2014, reflects that Applicant is indebted to the IRS as set forth in the SOR. (Government Exhibit 4.)

Applicant served on active duty in the United States Marine Corps for twenty-three years from October 1977 to May 2001, before earning an honorable discharge. She has been employed as a DoD contractor for the past thirteen years since September 2001.

In 2007, Applicant endured a financial setback when her husband was in a serious car accident and was arrested for Driving Under the Influence of Alcohol (DUI). The legal fees for counsel to represent her husband were \$7,300 and payment to the bail bondsman was approximately \$3,000. Applicant's husband's car was totaled, exceeding \$16,000, which their insurance would cover only up to \$11,000, so to total the car they had to pay the insurance company \$5,000. Her husband was sentenced to ten months in a work furlough program, requiring payment of \$580 bi-weekly to cover his room and board while at the facility and required to pay restitution in the amount of \$5,000. At this time, Applicant was also supporting their son in college in another state and trying to maintain their regular household expenses. Applicant indicates that she had to take out several loans to cover these expenses. (Government Exhibit 5.)

When income taxes became due, Applicant filed her income tax returns but did not pay the full amount of the taxes due. As a result, Applicant became indebted to the Internal Revenue Service for back taxes due for tax years 2008, 2009, and 2010 in the amount of \$23,983. She states that she contacted the IRS and was granted an installment agreement to pay off her back taxes, which she continues to pay on a monthly basis. The initial installment plan initially required that she pay \$450 monthly.

Applicant then suffered another financial setback in January 2012, when she received notice from her landlord requesting to terminate the tenancy because he needed to move back into the house over his pending divorce. She had 60 days to move, and incurred about \$5,000 in moving expenses and a rent increase of \$400 a month at their new residence. She surrendered a life insurance policy in order to cover some of the moving expenses. As a result, she could not afford to pay her income taxes owed for tax year 2011, and became indebted in the amount of \$10,786. (Applicant's Answer to SOR.)

At this point, Applicant's tax problems had grown beyond what she could handle. She hired a tax professional to assist in resolving her income tax issues. She has recently increased the monthly installment to \$600 monthly to cover her 2011 back taxes. She has paid off all of the taxes owed for tax year 2008. She plans to continue making these payments until all of her Federal back taxes have been paid in full. (See Applicant's Response to FORM, referred to as Applicant's Exhibit A.)

Applicant has submitted copies of her payment history records from the Internal Revenue Service. They indicate that she began making payments toward her taxes in 2009. The records also reflect that she currently owes nothing for tax year 2008. She owes \$4,687.58 for tax year 2009; \$15,328.48 for tax year 2010; and \$12,767.24 for tax year 2011. (See Applicant's Exhibit A.)

Applicant states that her financial outlook has improved. She and her husband have paid off the legal fees and most of the loans. They are now setting aside funds each month to offset the amount of taxes owed each year. They have changed their withholding status to "single or zero" which will reduce the income tax owed at the end of the year. Applicant further states that she feels great remorse, shame and embarrassment from the circumstances leading up to these financial problems. (Applicant's Answer to SOR.)

## **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 adjudication 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 . . . 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 her security clearance eligibility.

Circumstances largely beyond the Applicant’s control caused her financial problems, namely her husband’s accident, and DUI arrest, and later request to move out of her rental home with little notice. These unexpected expenses caused her to become delinquent with her Federal taxes. A close look at the Applicant’s credit

report reveals that for the most part, she has always paid her bills on time. In regard to the taxes in question, she has been making regular monthly payments to resolve them since 2009. Copies of the IRS records show that Applicant is paying her back taxes through an installment agreement plan. Presently, she has completely paid off her the back taxes she owed for tax year 2008. She plans to continued under the current installment plan until all of her Federal taxes are resolved. In the event that Applicant does not follow through with her payment plan and resolve her Federal tax debt, her security clearance will be in immediate jeopardy.

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. 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* also apply. Accordingly, I find for 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, support a whole-person assessment of good judgment, trustworthiness, reliability, candor, and 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 mitigates the negative effects of her financial indebtedness and the effects that it can have on her ability to safeguard classified information. On balance, it is concluded that the Applicant has overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports a finding for the 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 the Applicant.  
Subpara. 1.a.: For the Applicant.  
Subpara. 1.b.: For the 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 the Applicant.

Darlene Lokey Anderson  
Administrative Judge