

FINDINGS OF FACT

Applicant is 38 years old and has lived with his domestic partner since August 2006. He has a high school diploma. He holds the position of Electrician 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 each of the allegations set forth in the SOR under this guideline, except 1.a. (See Applicant's Answer to SOR.) A Credit Report of the Applicant dated January 22, 2014, reflects that at one time Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$200,000. (Government Exhibit 7.)

Applicant served in the United States Army from 1995 to 1997. Since 2004, he has been unemployed for about 17 months: May to June 2006 due to a layoff; February to May 2010 due to a layoff; November 2010 to April 2011 due to a layoff; and July to November 2013 due to being fired.

Applicant attributes his financial problems to his unemployment, his partner's job loss, his reduced income when employed, supporting his partner's unemployed parents and his relocation to another state in 2012. Since November 2013, Applicant has been gainfully employed and has been paying off his creditors in full one by one, before moving to the next debt. He states that he plans to resolve all of his delinquent debts as soon as possible.

In 2008 Applicant and his domestic partner purchased a primary residence. At the time, Applicant was earning an annual salary of \$85,000. Applicant was then laid off and was unable to find comparable employment. In January 2011, his domestic partner was also out of work. Applicant was unable to afford to make the mortgage payments on the house. By 2012, he felt that financially he had hit rock bottom. He was losing his house, and he had no stable employment. Unable to refinance the mortgage, in 2014, Applicant short sold the house, and satisfied the debt in full.

Allegation 1.a., is the debt that was owed to the bank for this mortgage, which was at one time past due in the amount of \$63,067 with a total balance of \$354,849. Applicant has provided proof that he resolved the debt in May 2014. (Government Exhibit 4.)

Allegation 1.b., is a debt that was owed to a bank for a mortgage that was past due in the approximate amount of \$5,048. The account was in foreclosure status with a balance of \$76,761. This was Applicant's principal residence until 2008 when the home became a rental property. Applicant stopped making payments on the mortgage in July 2013 because he could not longer afford to do so. Applicant indicates that the property is currently pending a short sale. (Government Exhibit 4.)

Allegation 1.c., a debt owed to a creditor in the amount of \$263 has been paid in full. (See, Applicant Response to the FORM.)

Allegation 1.d., a debt owed to a creditor in the amount of \$25, has been resolved. After contacting the creditor Applicant was informed that the debt was erroneously reported. The account was closed by the Applicant in April 2011 with a zero balance. The credit bureaus will be updated to reflect this within 30 days. (See, letter from creditor in Applicant's Response to FORM.)

Allegation 1.e., a debt owed to a creditor in the amount of \$852 remains outstanding. Applicant has been in contact with the collection agency and they are no longer able to collect for the creditor. Applicant plans to resolve the debt as soon as possible. (See Applicant's Response to FORM.)

Allegation 1.f., a debt owed to a creditor in the amount of \$566 remains outstanding. Applicant is in the process of settling the account. Applicant states that he plans to pay this account off by the end of the month. (See Applicant's Response to FORM.)

Allegation 1.g., a debt owed to a creditor in the amount of \$599 has been paid in full. Applicant offered that there was also another account held by the same creditor in the amount of \$435 that has also been paid in full. (See Applicant's Response to FORM.)

Allegation 1.h., a debt owed to a creditor in the amount of \$1,419 remains outstanding.

Allegation 1.i., a debt owed to a creditor in the amount of \$1,016, has been paid in full. (See, Applicant's Response to FORM.)

Allegation 1.j., a debt owed to a creditor in the amount of \$682, has been paid in full. (See, Applicant's Response to FORM.)

Allegation 1.k., a debt owed to a creditor in the amount of \$412 remains owing. Applicant contacted the creditor and was informed that they had no information concerning the account. Applicant plans to resolve the debt as soon as possible. (See Applicant's Response to FORM.)

Applicant indicates that since experiencing these financial hardships he has made significant changes to his spending habits and how he handles his finances. He plans to continue to pay his debts and he also maintains a minimum balance in his savings account in the unforeseen event of an emergency. Once his financial issues are completely resolved, he states that he will not allow this situation to occur again. He further states that he chose not to pursue bankruptcy and instead pay his bills as he did not want to take the easy way out.

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 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 behavior 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 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 his security clearance eligibility.

The evidence shows that circumstances largely beyond the Applicant's control contributed to if not caused, his financial indebtedness. Applicant was unemployed or under employed for about 17 months at various times in various years. His domestic partner also lost employment. Since becoming gainfully employed in November 2013, for the past two years, Applicant has made significant progress toward resolving his debts. He has tackled each of his delinquent debts, one by one, and at this point, he has paid, settled or otherwise resolved seven of the eleven delinquent debts. He has incurred no new debts and indicates that he will resolve his remaining four debts as soon as possible.

As stated, documentation provided by the Applicant shows that he has resolved seven of his eleven delinquent debts. Under the circumstances, Applicant is making a good-faith effort to resolve his debts. He understands that he must remain fiscally responsible if he is to hold a security clearance. He has not incurred any new debt that he cannot afford to pay, and he has no other delinquent debts. There is clear evidence of financial rehabilitation. However, in the event that he cannot meet his financial obligations, or if he does not completely resolve his current outstanding debt, his security clearance will be immediately in jeopardy. Considering all of the evidence, the 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*; 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 judgement, 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, including Applicant's military service. It mitigates the negative effects of his financial indebtedness and the effects that it can have on his ability to safeguard classified information. On balance, it is concluded that the Applicant has overcome the Government's case opposing his 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 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.
Subpara. 1.f.:	FOR Applicant.
Subpara. 1.g.:	FOR Applicant.
Subpara. 1.h.:	FOR Applicant.
Subpara. 1.i.:	FOR Applicant.
Subpara. 1.j.:	FOR Applicant.
Subpara. 1.k.:	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 the Applicant.

Darlene Lokey Anderson
Administrative Judge