



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-01232
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi Department Counsel
For Applicant: *Pro Se*

January 25, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for National Security Positions (e-QIP) dated February 2, 2006. (Government Exhibit 5). On July 27, 2009, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on August 11, 2009, in which she 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 the Applicant on September 17, 2009. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on September 23, 2009, and she submitted a reply on December 3,

2009. The case was assigned to the undersigned for resolution on December 4, 2009. Based upon a review of the case file, pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR and the exhibits. The Applicant is 46 years old, and married. She is employed by a defense contractor as an Administrative Engineer and is seeking to obtain a security clearance in connection with her 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). After a complete and thorough review of the evidence in the record, and upon due consideration of the same, 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 a security clearance because she is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant admits each of the fifty-six delinquent debts set forth in the SOR under this guideline. (Government Exhibit 4). Her delinquent debts total approximately \$86,000. Credit Reports of the Applicant dated April 1, 2006, and March 2, 2009, collectively reflect each of the delinquent debts set forth in the SOR. (Government Exhibits 9 and 10).

The Applicant has offered no evidence to explain how or why she became excessively indebted. Some of the delinquent debts in the SOR date back to at least 2000. She did explain that she was unaware of the number of delinquent debts she had when she completed her security clearance application because she had never seen her credit report. She also stated that some of the delinquent debt concerned medical bills that she thought should have been paid by the insurance company or were charged off several years ago. (Government Exhibits 4 and 6). She provided no further explanation.

On May 13, 2008, the Applicant filed for Chapter 13 Bankruptcy and contends that most, if not all, of the delinquent debts set forth in the SOR are included in the Chapter 13. (Government Exhibit 8). On August 13, 2008, an amended Chapter 13 payment plan was approved. On February 6, 2009, the Trustee filed a motion to dismiss the petition because the debtor failed to make payments pursuant to the Chapter 13 plan. Applicant stated that she fell behind on her payments under the plan because of the periods that her husband and daughter were hospitalized. She states that she had made arrangements with the Trustee to make up necessary payments to

avoid dismissal of the plan. Applicant has provided no documentation to support her assertions.

Applicant's bankruptcy records reflect that she earns \$3,122.72 monthly, her husband earns \$3,649.10 monthly, and they have a combined net monthly take home income of \$6,771.82. There is no evidence in the record to reflect whether her net income will adequately cover her current monthly expenses as well as the Chapter 13 payments.

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Conditions that could raise a security concern:

- 19(a) inability or unwillingness to satisfy debts;
- 19(c) a history of not meeting financial obligations.

Conditions that could mitigate security concerns:

None.

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 . . . 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, a security clearance 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 such access 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 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.

The Applicant is currently indebted to at least fifty-six creditors in the amount of approximately \$86,000. She has filed for Chapter 13 Bankruptcy relief and states that she is following the payment plan. However, there is evidence in the record that shows that she has been inconsistent in her payments after only one year of a five year payment plan, and that she had been unable to make the payments due to other hardships that she has not adequately explained. There is no evidence that she has followed the payment plan. A promise to take remedial measures in the future is not evidence of reform and rehabilitation. Furthermore, there is no evidence in the record to demonstrate that she can even afford to make her payments to the trustee in addition to her regular monthly expenses.

As of yet, none of the delinquent debts in the SOR have been paid. The Applicant is just starting the financial rehabilitation process and obviously has a long way to go before her delinquent debts are resolved. At the present time, she has not presented sufficient evidence to demonstrate a track record of financial responsibility or that she has resolved her financial indebtedness. Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

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 under all of the guidelines viewed as a whole, support a whole person assessment of questionable judgement, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified information.

The record is void as to any evidence in mitigation. There is no evidence of financial rehabilitation at this time. 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. None of the mitigating conditions apply. Her financial problems remain current and they are not isolated. The Applicant had not initiated a prompt, good faith effort to repay her overdue creditors or otherwise resolve her debts. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusory allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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.
 - Subpara. 1.b.: Against the Applicant.
 - Subpara. 1.c.: Against the Applicant.
 - Subpara. 1.d.: Against the Applicant.
 - Subpara. 1.e.: Against the Applicant.
 - Subpara. 1.f.: Against the Applicant.
 - Subpara. 1.g.: Against the Applicant.
 - Subpara. 1.h.: Against the Applicant.
 - Subpara. 1.i.: Against the Applicant.
 - Subpara. 1.j.: Against the Applicant.
 - Subpara. 1.k.: Against the Applicant.
 - Subpara. 1.l.: Against the Applicant.
 - Subpara. 1.m.: Against the Applicant.
 - Subpara. 1.n.: Against the Applicant.
 - Subpara. 1.o.: Against the Applicant.
 - Subpara. 1.p.: Against the Applicant.
 - Subpara. 1.q.: Against the Applicant.
 - Subpara. 1.r.: Against the Applicant.
 - Subpara. 1.s.: Against the Applicant.
 - Subpara. 1.t.: Against the Applicant.
 - Subpara. 1.u.: Against the Applicant.
 - Subpara. 1.v.: Against the Applicant.
 - Subpara. 1.w.: Against the Applicant.
 - Subpara. 1.x.: Against the Applicant.
 - Subpara. 1.y.: Against the Applicant.
 - Subpara. 1.z.: Against the Applicant.
 - Subpara. 1.aa.: Against the Applicant.
 - Subpara. 1.bb.: Against the Applicant.
 - Subpara. 1.cc.: Against the Applicant.
 - Subpara. 1.dd.: Against the Applicant.
 - Subpara. 1.ee.: Against the Applicant.
 - Subpara. 1.ff.: Against the Applicant.
 - Subpara. 1.gg.: Against the Applicant.
 - Subpara. 1.hh.: Against the Applicant.

Subpara. 1.ii.: Against the Applicant.
Subpara. 1.jj.: Against the Applicant.
Subpara. 1.kk.: Against the Applicant.
Subpara. 1.ll.: Against the Applicant.
Subpara. 1.mm.: Against the Applicant.
Subpara. 1.nn.: Against the Applicant.
Subpara. 1.oo.: Against the Applicant.
Subpara. 1.pp.: Against the Applicant.
Subpara. 1.qq.: Against the Applicant.
Subpara. 1.rr.: Against the Applicant.
Subpara. 1.ss.: Against the Applicant.
Subpara. 1.tt.: Against the Applicant.
Subpara. 1.uu.: Against the Applicant.
Subpara. 1.vv.: Against the Applicant.
Subpara. 1.ww.: Against the Applicant.
Subpara. 1.xx.: Against the Applicant.
Subpara. 1.yy.: Against the Applicant.
Subpara. 1.zz.: Against the Applicant.
Subpara. 1.aaa.: Against the Applicant.
Subpara. 1.bbb.: Against the Applicant.
Subpara. 1.ccc.: Against the Applicant.
Subpara. 1.ddd.: Against the Applicant.

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge