



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 12-04503
)
Applicant for Security Clearance)

Appearances

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

August 29, 2014

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (E-QIP) on December 9, 2011. (Government Exhibit 1.) On March 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 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 clearance should be denied or revoked.

Applicant responded to the SOR on April 7, 2014, and she requested an administrative hearing before a Defense Office of Hearings and Appeals Administrative Judge. This case was assigned to the undersigned Administrative Judge on May 2, 2014. A notice of hearing was issued on May 8, 2014, and the hearing was scheduled for June 13, 2014. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant presented two exhibits, referred to as Applicant's Exhibits A and B, which were also admitted into evidence without objection. She also testified on her own behalf. The record remained open until close of business on June 20, 2014, to allow the Applicant to

submit additional documentation. The Applicant submitted four Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A through D, which were admitted without objection. The official transcript (Tr.) was received on June 19, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

Applicant is 33 years old and has one child. She has a high school diploma and is currently working toward her Bachelor's Degree in Human Resources. She holds the position of Project Administrator 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 allegations 1(a), 1(f), and 1(n), set forth in the SOR, and denied the remaining allegations under this guideline, as she claims she has paid them. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated December 24, 2011; January 28, 2014; and June 9, 2014, reflect that at one time Applicant was indebted to each of the fourteen creditors set forth in the SOR, in an amount totaling in excess of \$11,000. (Government Exhibits 2, 4, and 6.)

Applicant explained in 1989, after graduating from high school, at the age of eighteen, she moved in with a roommate, and decided to enroll in college. She filled out the college application and the related paperwork, found a job, and decided to move out and get her own apartment, leaving the college paperwork behind. This paperwork contained all of her personal information. Later, when she started opening accounts, she learned that someone had stolen her information, and fraudulently opened up accounts in her name. She reported this to the local police department. (Tr. p. 26.) None of the debts listed in the SOR relate to this incident.

In 2002, Applicant had a child out of wedlock of whom she has full custody. She also provides most, if not all of her financial support. A few years later, because of a serious medical condition, Applicant incurred numerous medical bills that she could not afford to pay. In 2005, Applicant fainted at work and was taken to the hospital. She was diagnosed with a calcified left kidney which was producing massive kidney stones. She continued to battle the illness, going in and out of the hospital, accumulating large medical bills until her recovery in 2009. (Tr. p. 27.) She attempted to make payment arrangements with these creditors, but all of them wanted a large sum, or payment in

full, that Applicant could not afford. During this time, Applicant's employment did not pay much and she made a choice to pay her car note, food and rent. Her other debts, which were mainly medical bills, became delinquent.

In 2011, Applicant was hired by her current employer. Since then, she has been earning sufficient monies to pay off her delinquent medical bills and clean up her credit standing. She testified that she is also currently working with a real estate broker, who is counseling her on her financial affairs, and getting her in line to purchase a house. (Tr. pp. 41-42.)

Except for three of the delinquent debts listed in the SOR, all the others, allegations 1(b), 1(c), 1(d), 1(e), 1(g), 1(h), 1(i) 1(j), 1(k), and 1(n), all of which were medical accounts, have been paid and resolved. Applicant testified that she used about \$4,000 from her 2013 income tax refund to pay off these debts. She contacted each creditors, arrived at a payment amount, and paid the debts. Applicant's credit report dated May 30, 2014, reflects that these creditors have been paid. (Applicant's Exhibit B.) Applicant also paid off delinquent debts that were not alleged in the SOR. (Tr. 29-30.)

Allegation 1(n), a delinquent debt in the amount of \$130, that had been owing at the time of the hearing, has now been paid. (Applicant's Post-Hearing Exhibit A.)

There are three remaining delinquent debts. Allegation 1(a), is a debt in the amount of \$8,481 for a used vehicle purchased by the Applicant. She soon learned that the vehicle was a lemon and tried to return it, but was unsuccessful. After making payments on it for three years and multiple repairs that she could no longer afford, she contacted the creditor and voluntarily allowed it to be repossessed. Applicant is currently working with a financial counselor/real estate broker at the bank who is helping her settle, pay, and resolve this debt including her other remaining two. (Applicant's Post-Hearing Exhibit D.)

Allegations 1(l), a delinquent debt in the amount of \$108, and 1(m), a delinquent debt in the amount of \$1,545 are delinquent medical accounts that have fallen off of Applicant's credit report. She was under the impression that she no longer owed them. She now understands that simply because the debts are no longer being reported delinquent, the debts were hers and she never paid them. She testified that she will set up a payment arrangement with the creditors and resolve them immediately. (Tr. p. 41.)

Applicant currently earns approximately \$53,000 annually. (Tr. p. 53.) After paying her monthly expenses she has \$500 left in discretionary funds at the end of the month. She now has a savings account that currently has about \$5,700 dollars in it, and a 401(k) that contains about \$10,000. (Tr. p. 29.)

A letter from the Applicant's direct supervisor indicates that she is highly responsible and trustworthy on the job. Her supervisor calls on her to lead up projects

that entail large monetary value and sensitive information. She has not been known to violate security on any level. She is always respectful of privacy, sensitive information, rules and regulations. She manages a travel budget and other direct cost budget of more than \$450,000. She also manages the company IT assets for the program which amounts to over \$131,000, and government furnished equipment valued at over \$77,000. She is considered highly trustworthy and responsible, and recommended for a security clearance. (Applicant's Exhibit A.)

Performance appraisals of the Applicant for 2011 and 2012 reflect "excellent" ratings in every category. (Applicant's Post-Hearing Exhibits B and C.)

A letter of commendation from a major in the United States Marine Corps acknowledges Applicant for her professionalism and dedication by working tirelessly on her duties and responsibilities. Her high level of service, excellent performance on the job, trustworthiness and reliability have greatly improved the accomplishments of the mission. She is recommended for a security clearance. (Applicant's Exhibit A.)

Applicant admits that when she was younger she did not make good judgment decisions. She has learned from the past and understands that she must always be financially responsible. She testified that to avoid any financial problems in the future, she must have a six month money cushion for emergencies. (Tr. p. 42-43.) She never spends more than she can afford and she understands her responsibility to be fiscally responsible. Her financial counselor/real estate broker at the bank has been helping her clean up her credit that includes paying off all of her delinquent debts, so that she can qualify for a home loan sometime in the future. Furthermore, Applicant understands that all of her delinquent debts must be completely resolved before purchasing a home. She also intends to take a class offered by the county for first-time home buyers to learn more about the financial obligations involved in a mortgage loan. (Tr.pp. 55-56.)

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 obligation.

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 her security clearance eligibility.

The evidence shows that between 2006 and 2009, the Applicant became delinquently indebted because of a serious illness. She accumulated numerous medical bills that she could not afford to pay. In 2011, when she was hired by her current employer, she began resolving these debts. Applicant has contacted her creditors, and has either paid off the debt, settled it, or set up payments to resolve it. She has been

working diligently to repay these debts. Out of the fourteen debts listed in the SOR, eleven have now been paid and three are in the process of being resolved. Applicant has demonstrated financial responsibility.

Applicant now understands the importance of remaining fiscally responsible if she is to hold a security clearance. She has made a good-faith effort to resolve her past due indebtedness. She has not incurred any new debt that she cannot afford to pay. She is currently working with a financial counselor/real estate broker at a bank who is helping her resolve her remaining debts. In the event that Applicant does not resolve her financial obligations as promised, her security clearance will be in immediate 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, supports 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 favorable letters of recommendation and commendation. 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 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.
Subpara. 1.c.: For the Applicant.
Subpara. 1.d.: For the Applicant.
Subpara. 1.e.: For the Applicant.
Subpara. 1.f.: For the Applicant.
Subpara. 1.g.: For the Applicant.
Subpara. 1.h.: For the Applicant.
Subpara. 1.i.: For the Applicant.
Subpara. 1.j.: For the Applicant.
Subpara. 1.k.: For the Applicant.
Subpara. 1.l.: For the Applicant.
Subpara. 1.m.: For the Applicant.
Subpara. 1.n.: For the Applicant.

DECISION

In light of all the circumstances presented by the record in the case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge