



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 12-06544  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Department Counsel  
For Applicant: *Pro se*

March 17, 2016

---

**Decision**

---

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on January 10, 2012. (Government Exhibit 1.) On May 30, 2015, 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 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 Applicant and recommended referral to an administrative judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR on June 25, 2015, and she requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. This case was assigned to this administrative judge on December 16, 2015. A notice of hearing was issued that same day, scheduling the hearing for January 5, 2016. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. Applicant presented one exhibit, referred to as Applicant's Exhibit A which was admitted without objection. She also testified on her own behalf. The record remained open until close of business on January 11, 2016, to allow Applicant to submit additional supporting documentation.

Applicant submitted four Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through 4, which were admitted without objection. The official transcript (Tr.) was received on January 13, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **FINDINGS OF FACT**

Applicant is 45 years old and is divorced. She has a high school diploma and two years of college. She holds the position of Secretary/Administrative Assistant for a defense contractor. She 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 she is financially overextended and at risk of having to engage in illegal acts to generate funds.

Applicant admits both allegations set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Credit Reports of Applicant dated January 31, 2012; December 9, 2014; and November 29, 2015, reflect that at one time Applicant was indebted to each of the creditors set forth in the SOR in an amount totaling in excess of approximately \$172,000, most of which was for a delinquent mortgage. (Government Exhibits 3, 4 and 5).

Applicant began working for her current employer in April 2004. In 2007, she purchased a condominium for \$495,000. She put \$130,000 down with cash that she acquired from the proceeds of her divorce. The remaining balance was covered by her adjustable rate mortgage on the condo consisting of two loans, a first, and a second, which was an equity line of credit. The monthly payments started out as \$2,000. In 2009, her loan adjusted upward, and her monthly payments increased to \$3,000. From 2007 to 2010, Applicant made the payments on the condo as required.

In 2010, Applicant contacted the bank to obtain a loan modification as her payments had become too steep to maintain. The value of her condo had also greatly depreciated. The bank denied her loan modification request. She then tried to short sale the property, but was unsuccessful. Applicant testified that she continued to badger the bank about refinancing her house to negotiate a lower rate, but the bank was unresponsive. With the increased mortgage rate, the taxes, and the home owner's association fees, the condo had become a money pit that she could no longer afford. In October 2010 Applicant stopped making her mortgage payments. At this point, she was upside down on the house and wanted out. Applicant continued to live in the condo for

almost a year without making a payment, until August 2011. In 2011, the condo was foreclosed upon, and later sold by the bank for \$280,000.

Applicant testified that she has never received an Internal Revenue Service (IRS) Form 1099 nor has she been notified by the bank that she owes them anything. (Tr. p. 27.) She stated that upon receipt of the SOR on May 30, 2015, she learned for the first time that she was indebted to the mortgage lender for the home equity loan that was charged off in the approximate amount of \$49,490. Applicant testified that she did not contact the creditor before the hearing because she believed that the foreclosure of the condo, and its resale was the collateral that resolved the loan. Applicant was given time following the hearing to investigate the matter.

Applicant submitted letters verifying that she has disputed the loan alleged in allegation 1a. (Applicant's Post-Hearing Exhibit 1.) She is requesting a letter of agreement from the bank asserting the One Action Rule that would give her a zero balance, confirming that the foreclosure in 2011 is collateral to cover the default mortgage loan amount of \$49,490. Applicant was told by the bank that they are currently investigating her dispute. She has also placed protests with two of the credit reporting agencies that report the debt as owing. (Applicant's Post-Hearing Exhibit 2.) Applicant submitted a copy of her most recent Experian credit report that no longer reflects the debt as owing. (Applicant's Post-Hearing Exhibit 3.)

Performance appraisals of the Applicant for the years 2013 and 2014 are favorable and reflect that she "exceeds expectations" or "consistently exceeds expectations." (Applicant's Post-Hearing Exhibit 4.)

Applicant testified that she now rents an apartment. She is current with all of her monthly expenses. She has no outstanding delinquent debts. She is living well within her financial means and has no intention of getting into this type of situation again.

## **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.(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; and

20.(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issues.

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 that 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 a 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 her security clearance eligibility.

The evidence shows that there is no history of financial indebtedness. Other than this defaulted mortgage account, Applicant has always paid her bills on time. Following her divorce, Applicant purchased a condo that she really could not afford. She purchased the house with an adjustable rate mortgage, and the understanding that when it adjusted she could refinance it. This was a fallacy. She could not afford to

make the payments with the loan adjustment. To avoid foreclosure, she consistently tried to obtain a loan modification and even a short sale, but was unsuccessful. Her condo was foreclosed upon and resold by the bank.

Since receiving the SOR and learning of this debt, Applicant has contacted the creditor and asked for clarification about the debt. Both parties are currently working to resolve the matter and Applicant understands that she must follow through. At this time, Applicant has done everything possible to show that she is addressing this issue. She has demonstrated a good-faith effort to resolve her past-due indebtedness. She understands that she must remain financially responsible if she is to hold a security clearance. There is clear evidence of financial rehabilitation. Considering all of the evidence, Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case. Applicant only learned of the debt for the first time when she received the SOR. She also recently filed disputes with each of the credit reporting agencies. Her most recent credit report from one of the credit reporting agencies no longer shows the debt as owing. Under the circumstances, Applicant has shown good judgment.

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.(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.

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, 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 that her financial indebtedness can have on her ability to safeguard classified information. On balance, it is concluded that Applicant has overcome the Government's case opposing her 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 Applicant on the allegations in the SOR, as required by Paragraph 1.25 of Enclosure 3 of the Directive are:

Paragraph 1: For Applicant.  
Subpara. 1.a.: For Applicant.  
Subpara. 1.b.: 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