



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



In the matter of: )  
 )  
----- ) ISCR Case No. 13-00501  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin Howry, Department Counsel  
For Applicant: Corey Williams, Attorney At Law, The Edmunds Firm

February 20, 2014

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (E-QIP) on August 5, 2010. (Government Exhibit 1.) On August 15, 2013, 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) detailing the security concerns under Guideline F for Applicant. The SOR set forth the reasons why DoD adjudicators 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 September 26, 2013, and she requested a hearing before an administrative judge. This case was assigned to the undersigned on November 4, 2013. A notice of hearing was issued on December 3, 2013, and the hearing was originally scheduled for December 12, 2013. Applicant's Counsel requested a continuance based upon good cause, and the matter was rescheduled for January 6, 2014. At the hearing the Government presented fourteen exhibits, referred to as Government Exhibits 1 through 14, which were admitted without objection. Applicant presented twenty-six exhibits, referred to as Applicant's Exhibits A through Z,

which were admitted without objection. She also testified on her own behalf. The record remained open until close of business on January 17, 2014, to allow Applicant to submit additional documentation. She submitted three Post-Hearing Exhibit, referred to as Applicant's Exhibits AA through CC, which were admitted without objection. The official transcript (Tr.) was received on January 14, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **FINDINGS OF FACT**

Applicant is 57 years old and married with two children and a grandchild. She has a high school diploma, some military training and some college. She is employed with a defense contractor as Global Support Representative and 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 denied in-part, and admitted in-part, the single allegation set forth in the SOR under this guideline. Credit Reports concerning Applicant dated September 4, 2010; May 10, 2013; and December 30, 2013, reflect that Applicant was excessively indebted and on February 12, 2013, filed Chapter 7 Bankruptcy and subsequently discharged approximately \$66,000 of unsecured debt on June 14, 2013. (Government Exhibits 2, 10, 11 and 13.) The Government alleged that \$97,648 was discharged in Applicant's Chapter 7 Bankruptcy. Applicant explained she paid \$30,00.00 of her own money, borrowed against her 401(k), to reaffirm certain debts that were not discharged. (Tr. pp. 56 - 62, and 98 -100.)

Applicant served in the United States Army from 1975 to 1978, during which she held a security clearance. She has worked for her current employer for the past 21 years. Since April 2010, she has been in her current assignment that now requires a security clearance.

Prior to 2007, Applicant had no serious financial problems. She lived within her means and paid her bills on time, including the mortgages on her home, her car payment, a truck payment, a payment on a 5<sup>th</sup> wheel, and her credit card bills, all of which she incurred before 2007. In 2007, several unexpected incidents occurred that clearly started the financial down spiral. First, Applicant's husband, who was an Assistant Manager at Walmart, and who earned about \$65,000 annually, was laid off of his job. (Tr. p. 56.) Although he received unemployment benefits, he only received

40% of what he was previously adding to the household income. Applicant's husband was unable to find employment and they were forced to exhaust their savings of \$20,000 just to pay for food and housing. The other household bills fell behind.

Applicant incurred substantial out of pocket expenses to help care for her parents who lived out of state. In 2010, Applicant's father fell ill and required surgery. Applicant traveled to see him and provide emotional support. In July 2012, Applicant's parents were in a severe car accident out of state which further exacerbated Applicant's financial situation. To provide emotional support to her parents, each time she traveled to see them Applicant incurred the cost of a plane ticket for her flight, hotel expenses and food. This created a significant monetary burden. Applicant's mother died as a result of the accident. Two months later, Applicant incurred additional travel expenses related to her mother's memorial and estate that required her to travel out of state again.

Following her husband's job lay-off in 2007, Applicant contacted an attorney who advised her to sell her house since it was her largest debt, and then to file Bankruptcy. Applicant did just that. She placed her house up for short sale and sold it for \$8,000 less than she had purchased it, and had approximately \$12,000 in realtor fees. (Applicant's Exhibits Q, R, and S). On February 12, 2013, she filed for Chapter 7 Bankruptcy and discharged approximately \$66,000 in debt on June 14, 2013. (Applicant's Exhibits K, L, M, N and S.) As noted above, Applicant reaffirmed several debts, including her credit card, her Ford F-350 truck, and the fifth-wheel trailer. (Applicant's Exhibits L.) The credit card debt was placed under the auto loan for the F-350 and was subsequently paid off. (Applicant's Exhibit T.) Applicant satisfied the required financial counseling courses related to her Bankruptcy filing.

When Applicant could not afford to pay her bills, she contacted her creditors and told them about her situation. She borrowed about \$30,000 from her 401(k) to pay off several debts that she did not want to discharge. She also used some of it for moving expenses to relocate for her current job, and to pay for attorney fees for her security clearance hearing. (Tr.p 103.) Applicant is currently repaying the money borrowed from her 401(k) through automatic payroll deductions. There is also some evidence of a student loan in the amount of \$10,000 that Applicant co-signed for her daughter. Applicant contacted the creditor, renegotiated the loan, and received a significant reduction in interest for a period of one year. Applicant and her daughter are following the arrangement made with the creditor and will remain current with the payment on the loan. Applicant is also working to significantly reduce the principal on the loan, if not entirely, before that lower interest rate expires. (Applicant's Exhibits CC.)

In 2011, Applicant's husband moved out of state to help take care of Applicant's father. Her husband lives in their fifth-wheel trailer in a small remote community near Applicant's father. He has not been successful in finding stable employment. For the past two years, he has been in an apprenticeship learning to work on boats but it does not pay much. Applicant is hopeful that at some point in the future, his apprenticeship may result in a retirement opportunity for the both of them. Her husband pays \$50 a

month for electricity and water. He earns enough to pay for his food, so his expenses are minimal. Applicant provides most, if not, all of the financial support for the family. After short selling their house, Applicant's children moved out of state with their father. To stay employed and to continue to provide financial support to her family, Applicant was forced to move to another city in a different state for a new job assignment that she started in April 2010.

Applicant's personal financial statement dated January 17, 2014, reflects that after her monthly expenses, Applicant has a net remainder of \$106. (Applicant's Exhibit AA.) She realizes that her finances are tight but has options available to her if she is confronted with any future unexpected expenses. (See Applicant's Exhibit CC.) Her net worth totals assets of approximately \$180,000. (Applicant's Exhibits BB.) Her annual income is \$55,000. She testified that she has learned to live on one salary. (Tr.p. 64.) She has \$65,000 in her 401(k) and plans to continue to pay herself back for the money she borrowed. At some point she will also receive a pension from a previous employer in the amount of approximately \$600 monthly. She has no plans to retire soon. She hopes to continue to work and save money. She has moved to a smaller apartment and is getting rid of her cable bill for television to reduce her expenses even further.

A number of letters of recommendation from Applicant's immediately supervisor, and other professional colleagues and friends, collectively indicate that she is a well-respected, hardworking, dedicated employee, who for more than twenty years has demonstrated competence, creativity, resourcefulness, reliability, intelligence, conscientiousness and honesty. Her contributions to the company have been impressive and valuable. She is highly recommended for a security clearance. (Applicant's Exhibits A and W.)

Performance appraisals of the Applicant for 2010, 2011 and 2012 are all favorable. (Applicant's Exhibit J.)

Applicant received a number of awards and commendations for her outstanding job performance. (Applicant's Exhibits G, H, I, J and X.)

## **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 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 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 possible 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 clearly shows that circumstances beyond Applicant's control, and through no fault of her own, caused her financial problems. After her husband's unexpected job lay-off in 2007 and the downturn in the economy preventing him from finding gainful employment, the unexpected medical emergency involving her parents car accident in 2012, and her mother's death in 2012, Applicant's bills were simply out of control. Since her husband lost his job, Applicant has been slowly climbing out of debt and she has finally reached a financial position where she can remain current on all of her debts and begin saving for the future. For the past year, she has been working hard to resolve her indebtedness. She hired an attorney who advised her to short sale her house, and file Chapter 7 Bankruptcy. She followed his advice and she is now clear and free of all delinquent debt. She is also living on and following a strict financial budget.

Since acquiring unexpected debt, Applicant has acted responsibly under the circumstances. She short sold her house, borrowed from her 401(k) to pay bills, filed bankruptcy to discharge others and drastically cut down on her monthly expenses. She has made permanent financial changes to her lifestyle that show that she can live solely off one income and still save money. She understands that she must remain fiscally responsible at all times if she is to hold a security clearance. She has made a good-faith effort to resolve her past-due indebtedness. She has clearly demonstrated that she can properly handle her financial affairs. There is strong 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.

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 Applicant under Guideline F (Financial Considerations).

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 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, including Applicant's favorable letters of recommendation and her favorable work history. They mitigate 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 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 25 of Enclosure 3 of the Directive are:

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