



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



In the matter of:)
)
-----) ISCR Case No. 14-00507
)
Applicant for Security Clearance)

Appearances

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

September 17, 2014

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (E-QIP) on July 31, 2013. (Government Exhibit 1.) On March 7, 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.

The Applicant responded to the SOR on a date uncertain, 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 June 27, 2014. A notice of hearing was issued on July 25, 2014, and the hearing was scheduled for August 8, 2014. At the hearing the Government presented five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant called four witnesses and 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 official transcript (Tr.) was received on August 19,

2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 54 years old and divorced with three children. She has a two master's degrees, one in English, as a second language; and the other in English, with a specialty in written communication. She holds the position of Senior Training Development Specialist for a defense contractor. She 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). 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.

The Applicant admitted allegations 1(c), and 1(d), set forth in the SOR under this guideline. She denied allegations 1(a), 1(b), and 1(e). In regard to allegation 1(f), she neither admitted or denied the allegation but she provided documentation showing that she has paid the debt. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated August 29, 2013 and June 23, 2014, reflect that Applicant is indebted for each of the debts set forth in the SOR, of which the vast majority are mortgage-related in an amount totaling in excess of \$700,000. (Government Exhibits 3 and 4.)

Applicant met her husband when she was 19 years old. He was her first boyfriend, and they married in 1987. (Tr. p. 30.) They had three children. For many years, it was an abusive marriage, but Applicant tried to hold on long enough to allow her children to grow up and get into college. During the marriage, Applicant worked and put her husband through school, allowing him to finish his engineering degree. Throughout the marriage, her husband was controlling and handled all of the finances. In April 2010 Applicant and her husband separated, but the agreement was that she would give him \$2,500 each month, which was her share, so that he could pay the bills, including the mortgage. In June 2010 a sheriff knocked on the front door of her house and told her that she had three days to leave the house, in essence she was being evicted. Unbeknownst to the Applicant, since he intercepted the mail, her husband had not been paying the mortgage, or any of their bills with her money. He was having an affair, and he had cleared out their bank accounts. Applicant and her children were immediately left homeless and without his financial support.

In October 2010, Applicant was hired by a defense contractor. She applied for and obtained a security clearance shortly thereafter. She knew that the job would require her to travel and work overseas, and in a combat zone, but in order to support

her children she chose to do it. Applicant has served on two overseas tours, in Iraq from 2010 to 2011, and in Afghanistan from 2013 to 2014.

Two of her three children testified to their mother's remarkable character. In their opinion, she is extremely reliable and trustworthy, and that the financial indebtedness she is confronted with is all a result of their father and his personal problems. (Tr. pp. 64-71.)

Applicant stated that the financial indebtedness set forth in the SOR was incurred either without her knowledge or, with regards to the mortgages, allowed to lapse into default without her knowledge or consent. She further stated that she did not realize the extent of her ex husband's financial deception until she received the SOR that listed the number of debts he had incurred in their marital names or through forgeries. Most of the debts were incurred while they were separated and she was working on an overseas assignment. She claims that she is not responsible for financial debt incurred during the marriage since her ex-spouse forged her signature and committed identity fraud by using a stolen driver's license of hers. Applicant has discussed with an attorney and private investigator about pursuing a civil suit against her ex-husband for theft, identity fraud, forgery and a number of other transgressions. She is also considering filing a police report and a criminal complaint with the state. She has opened disputes with the three main credit agencies. She has also hired a credit monitoring service and has notified various institutions that the liens and financial obligations are presently in dispute. (See Applicant's Answer to SOR.)

Testimony from two of the Applicant's adult children, her supervisor, and a past coworker corroborated her testimony about her situation. Specifically, the financial situation she is in because of her husband's abusive ways and fraudulent misconduct. All of them are aware of the Applicant's abusive marriage, and contentious separation and divorce, and attribute her financial difficulties to her ex-husband. (Tr. pp. 57-71.)

Applicant filed for divorce in December 2012, which is now finalized. Applicant provided a copy of the Marital Settlement and Mutual Release Agreement that indicates that Applicant's husband shall assume and hold Applicant free and harmless from any and all debts and obligations incurred by Applicant's husband prior to the marriage and after April 6, 2010, the date of the parties separation and any and all debts standing in his name whenever incurred. (Applicant's Exhibit B.)

Allegation 1(a) is a tax lien against her in April 2008 in the amount of \$1,391. Applicant had no knowledge of the tax lien since her husband withheld information from her and hid the bills. Applicant believes that it was for unpaid homeowner's association fees on a rental property that was foreclosed upon and resold. (Tr. pp. 34-35.)

Allegation 1(b) is a debt to a bank on an account that was charged off in the approximate amount of \$60,051. Applicant's ex-spouse took out a home equity loan and forged the Applicant's signature while she was working out of the country. She

never had access to the money, nor does she know what he did with it. (See Applicant's Answer to SOR.)

Allegation 1(c) is a debt owed to a lender on a mortgage account for Applicant's primary residence that became past due in the approximate amount of \$81,316 without her knowledge. The account was in foreclosure status with a total loan balance of \$645,000. Applicant was an initial obligor when the loan was signed, but was not aware that the money she gave her husband each month for her share of the payment during their separation was not given to the bank but pocketed and placed in a personal account of his. Applicant's ex-husband lied to her and led her to believe that he was making the payments. Applicant was shocked when they lost their home, as she was given three days to vacate the property. (See Applicant's Answer to SOR.)

Allegation 1(d) is a debt owed to a lender on a mortgage account that is in foreclosure status with a total loan balance of \$445,900. Applicant explained that this was a rental property that was foreclosed upon because her former spouse did not make the payments. (Tr. p. 43.)

Allegation 1(e) is a debt owed to a lender on an account that has been charged off in the approximate amount of \$121,640. This was a home-equity loan her ex-husband took out against the rental property that was foreclosed upon discussed above. He told the Applicant that he was making the payments when he was not. (See Applicant's Answer to SOR.)

Allegation 1(f) is a debt owed for a medical account placed for collection in the approximate amount of \$81. This was paid by the Applicant. She was out of the country when the bill was received. (Tr.p. 48-49.)

Applicant's supervisor on her overseas assignments, a retired Marine/Army veteran testified to Applicant's trustworthiness, honesty, responsible nature, great character and work habits. He considers her to be the strongest member of his team, always volunteering for the most difficult jobs, when others are trying to do the least. She is well respected. (Tr. pp. 57-61.) He also submitted a letter of recommendation that indicates that Applicant attended weekly, sensitive, but unclassified security briefings with her colleagues, while overseas, and consistently and properly protected sensitive information, never demonstrating poor judgment or an unwillingness to abide by rules or regulations. She is highly recommended for a security clearance. (Applicant's Exhibit A, page 2.)

A coworker of the Applicant testified that she is a good friend who is an outstanding person. She is very reliable and trustworthy, and recommended for a security clearance. (Tr. pp. 61-64.)

Two of the Applicant's children testified that their mother is responsible, hard working and trustworthy. They are both of the opinion that the financial problems in the

family were brought on by their father, who among other things has a drinking problem, and who left them homeless and without his financial support. (Tr. pp. 64-67.)

A letter of recommendation from the Principal Training and Development Specialist indicates that in his opinion, Applicant is a person of impeccable character and professionalism. She is most reliable, hardworking, and trustworthy. She can be counted on to maintain solid bearing and to use good judgment and to be clear-headed and purposeful in difficult situations in a hazardous foreign environment and tough living conditions. She is the most intelligent member of his team, someone who demonstrates full awareness of the need to maintain security and confidentiality. She is recommended for a security clearance. (Applicant's Exhibit A, page 1.)

A letter from a priest, who is a Community College teacher, and a frequent guest lecturer where the Applicant taught English, states that Applicant is held in high esteem by all who know her. He is well aware of the plight she is experiencing with her ex-husband and the financial problems he created for her. He states that he would be very hard-pressed to find anyone who exemplifies a higher example of remarkable character. He has supported and stood by Applicant as she endured the most difficult marital dissolution he has ever seen. He states that in his opinion, her ex-husband is a very disturbed individual who inflicted a great deal of abuse upon the Applicant both emotionally and financially. (Applicant's Exhibit A, page 3.)

Since her separation, Applicant has been working hard to support herself and her children. She recently purchased a house for her and her children to live in. She is current with all of her monthly expenses. She has only one credit card that is used for emergency purposes only.

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's credit reports indicate that she 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.

Although the Applicant failed to provide documentation to support the fact that her husband left her and her children homeless, without financial support, and with debts that he incurred fraudulently, the testimony from her witnesses is most compelling. Under the unique circumstances of this case, a close look at the evidence shows that the Applicant has not been financially irresponsible. Her only fault is that she allowed her abusive marriage to continue for as long as she did. With short notice, Applicant was placed in a horrible situation, left homeless with two children to support without any assistance from her husband. Applicant has shown remarkable resilience

by obtaining employment with the defense industry, serving her country overseas in a combat zone, and sacrificing convenience for the sake of her children. Her testimony is credible. Her character is honorable, she has shown integrity, good judgement, high morals and responsibility. The Marital Settlement and Mutual Release Agreement further indicates that she most likely is not responsible for the delinquent debts set forth in the SOR. But for the delinquent debts incurred by her husband under fraudulent actions, she is current with all of her bills. She has purchased a house and is current on those payments. She is currently disputing the delinquent debts on her credit reports that should not be there. She is also pursuing legal action against her ex-husband for ruining her credit. She has acted responsibly under the circumstances and the problem is being resolved. She has done, and is doing, everything that can be expected under the circumstances.

Applicant understands that she must remain 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 has learned from her mistakes, and demonstrated that she can properly manage her financial affairs. There is clear evidence of financial rehabilitation. 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 particularly considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of the 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 her favorable and compelling witnesses, laudatory letters of recommendation, and excellent history of dedicated service to our country on her overseas assignments. 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:

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| 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. |

DECISION

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

Darlene Lokey Anderson
Administrative Judge