



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 14-01875
)
Applicant for Security Clearance)

Appearances

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

February 9, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (E-QIP) on August 8, 2013. (Government Exhibit 1.) On July 11, 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 the Department of Defense (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 July 24, 2014, and she requested an administrative hearing before a Defense Office of Hearings and Appeals (DOHA) Administrative Judge. This case was assigned to the undersigned Administrative Judge on September 25, 2014. A notice of hearing was issued on October 1, 2014, and the hearing was scheduled for December 2, 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 eleven exhibits, referred to as Applicant's Exhibits A through K, which were also admitted into evidence without objection. She also testified on her own behalf. After the record

closed, Applicant submitted three Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A through C, which were admitted without objection. The official transcript (Tr.) was received on December 10, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

Applicant is 55 years old and divorced with two children. She has a Bachelor's degree and a Master's degree in Nursing. She holds the position of Project Manager 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 the allegations set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated August 31, 2013; March 18, 2014; and September 2014, reflect that Applicant is indebted to each of the creditors set forth in the SOR. (Government Exhibits 3, 4, and 5.)

Prior to 2008, Applicant had a good job with her employer in state A, with whom she worked for three and a half years. She lived in an affordable upgraded house. She paid her bills on time and had no financial problems. In 2008, her employer offered Applicant a more lucrative job in state B, increasing her income to almost \$200,000 annually. (Applicant's Exhibit J.) To accept the job, Applicant sold her modest home in state A, and with the profit from the sale, she purchased a big beautiful fixer-upper in state B. Applicant asked her employer for an employment contract, but they refused. Trusting her employer on their word, and the fact that they were referring her to a realtor to assist in finding her a new home in state B, Applicant was comfortable with taking the job. In state B, Applicant purchased a home for \$800,000, with monthly payments of \$4,500. Applicant was employed in state B for about a month before she was asked to resign from the position. Applicant was told that she and her new boss, the CEO, had some communication difficulties. Applicant was given a six month severance package. Applicant continued to make the mortgage payments on the house, and pay her bills as best she could. To get out from under the debt, Applicant tried to sell the house, and even short sale the house, but was unsuccessful. It was about this time that Applicant's husband lost his job. Applicant was unable to find work in the area, so she packed up her car and moved to state C to take a job.

In 2009, Applicant and her husband consulted a debt management company for financial counseling, in an attempt to consolidate their delinquent debts and get them paid off. They also tried to turn the house in state B over to the lender by way of deed in lieu of foreclosure, but it was not approved. (Tr. p. 76, and Applicant's Exhibit H.)

In March 2013, Applicant's husband filed for divorce. The following month, Applicant and her husband separated. At that time, they quit making payments through the debt management company. (Applicant's Exhibit H.) Applicant contacted their creditors and asked them to continue the lower interest rate and eliminate the late fees because of the pending divorce, which the creditors agreed to do. Applicant's divorce was final in April 2014. Applicant had the largest income in the household, and the court assigned her \$40,000 of the marriage debt. Her husband was assigned only \$10,000 of the marriage debt. Since her divorce, she has already reduced her marriage debt to \$20,000. (Tr. p. 82.)

The following debts remained outstanding. Applicant was indebted to a creditor in the amount of \$1,654. Applicant explained that when she was hired by her current employer she broke her lease and was required to pay a one month termination penalty. Applicant testified that she paid off the debt and it no longer reflects as owing on her credit report. (Applicant's Exhibit C, and Tr. p. 53.)

Applicant was indebted to a creditor for a delinquent credit card in the amount of \$6,646. Applicant testified that the credit card was used for her business-related expenses. Although the debt was charged off by the creditor, she has continued to make payments. Applicant currently owes about \$5,600, and makes payments of \$66 monthly and will continue to pay it off. (Tr. p. 58-59, and Applicant's Exhibit D.)

Applicant was indebted to a creditor for an account that was at one time 180 days or more past due in the amount of \$141,663. Applicant explained that this was the mortgage on her house in state B. The house has been in pre-foreclosure status for several years, and is listed with a realtor. The creditor has recently given Applicant the approval to submit a deed in lieu of foreclosure. (Tr. p. 61, and Applicant's Exhibit E.)

Applicant was indebted to a creditor for a delinquent credit card account in the amount of \$8,806. Applicant stated that she used this card for personal expenses, including COBRA payments and living expenses while she and or her husband were not employed. Applicant testified that she is making payments on the debt and has been for sometime. Applicant currently owes about \$7,900, and her payments are \$100 monthly. (Tr. p. 81.)

Applicant is indebted to a creditor in the amount of \$36,988 for a charged-off account. She explained that this is the second line of credit on her house that she is trying to sell. In the event that the loan is forgiven by the creditor when the house is returned, she will pay any tax liability when assessed. She explained that as she

lowers her credit card debt, she increases her payments on other outstanding accounts.

Applicant was indebted to a creditor for an account placed into collection in the amount of \$237. She explained that this was for cable equipment left in her house in state B. Applicant testified credibly that this debt has been taken care of. (Tr. p. 87.)

Following the hearing, a letter from the Applicant indicates that her ex-husband has recently hired an attorney to pursue financial support. Although Applicant had tried to avoid it, she has now been forced to file for Chapter 7 Bankruptcy. Her hearing is scheduled for January 14, 2015. (Applicant's Post-Hearing Exhibit A.)

Applicant's supervisor, a Navy commander and flight surgeon, testified on behalf of the Applicant. He stated that Applicant has been working for him for the past 14 months. She has exhibited good character, trustworthiness and responsibility. He noted that she has continued to act with dignity, honor, courage, and commitment in the face of financial and personal adversity that she has been going through. Her work is extremely valuable to the Department of Defense medical command. (Tr. pp. 109-126.)

Letters of recommendation from numerous professional associates of the Applicant indicate that she is highly motivated, dedicated and skilled at her job. She is highly ethical and trustworthy. She is highly recommended for a security clearance. (Applicant's Exhibit B.)

A letter of recommendation from a retired Army colonel, who is an international leader in Health Informatics, a registered nurse, and a full professor, and who has known and worked with the Applicant over the past twenty years, states that in her opinion Applicant is reliable, trustworthy, responsible, and of the highest integrity. She is said to be a dedicated health professional who has always placed the needs of others above her own and has always shown fiscal responsibility on the Health IT projects they worked on. Applicant is highly recommended for a security clearance. (Applicant's Post-Hearing Exhibit B.)

A letter from a Senior Vice President of a previous employer states that Applicant was competent, efficient, timely, and well organized in fulfilling the objectives of her job requirements. In fact she consistently demonstrated enthusiasm to exceed the set objectives. Applicant is recommended for a security clearance. (Applicant's Exhibit C.)

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;
- 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 adjudication 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 that 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 circumstances largely beyond the Applicant's control contributed, if not caused, her financial problems. Applicant accepted a more lucrative job in state B and relied on her employer when she purchased a home there. After a month on the job, she was asked to resign for no fault of her own. She was left without income to cover her living expenses. At the same time, her husband lost his job. Without income to pay their bills, they became financially delinquent. To complicate matters, in 2013, Applicant's husband filed for divorce. All along, Applicant has continued to focus on staying employed and resolving her debt. She has been in contact with her creditors. She has paid off some of her debt and is making payments toward other debt. She has recently been approved to submit a deed in lieu of foreclosure concerning the house in state B that she has been unable to sell for many years. As circumstances have recently changed, Applicant is now in the process of filing for Chapter 7 bankruptcy in order to discharge her remaining delinquent debts.

Under the circumstances, Applicant is making a good-faith effort to resolve her debts. She understands that she must remain fiscally responsible if she is to hold a security clearance. She has not incurred any new debt that she cannot afford to pay, and she has is working to resolve her delinquent debt. There is clear evidence of financial rehabilitation. In the event that she cannot meet her financial obligations, or if she does not completely resolve her current outstanding debt, her security clearance will be immediately in jeopardy. However, at this time, 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, 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 the favorable testimony from the Applicant’s witness. 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 E3.1.25 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

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 the Applicant.

Darlene Lokey Anderson
Administrative Judge

