



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-02045

Appearances

For Government: Philip K. Katauskas, Department Counsel
For Applicant: *Pro se*

June 15, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) July 24, 2013. (Government Exhibit 5.) 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 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 in writing on a date uncertain, and elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to Applicant on April 1, 2015. Applicant received the FORM on April 3, 2015. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant did not submit a response to the FORM. This case was assigned to the undersigned on May 21, 2015. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 35 years old, and is divorced with three sons. She has a high school diploma and some college. She is employed with a defense contractor as an Electrician 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 served on active duty in the United States Army from 2001 to 2003, and then in the active reserves from 2003 to 2009, when she was honorably discharged. She has been working for her current employer since March 2011.

Applicant has a history of financial indebtedness. There are fourteen delinquent debts set forth in the SOR totaling in excess of \$16,567. Applicant admitted allegations 1.a., 1.d., 1.e., 1.f., 1.g., 1.h., 1.l., and 1.m. set forth under this guideline. These seven debts total \$11,087. She also admits filing for Chapter 7 bankruptcy in April 2010, and that her debts were discharged in October 2010. She denies allegations 1.b., 1.c., 1.i., 1.j., 1.k., 1.n., and 1.o., contending that they have either been paid, are being paid, or are being disputed. (See Government Exhibit 3.) She has provided no documentary evidence to support her contentions.

A credit report of the Applicant dated August 16, 2013, which include information from all three credit reporting agencies, reflects that she is indebted to each of the creditors set forth in the SOR. (Government Exhibit 7.) The debts include 1.b., a judgment filed against her by a creditor in the amount of \$404; 1.c., a debt owed to a creditor in the amount of \$181; 1.d., a debt owed to a cable company in the amount of \$491; 1.e., a delinquent medical bill in the amount of \$71; 1.f., a delinquent medical bill in the amount of \$201; 1.g., a delinquent medical bill in the amount of \$146; 1.h., a delinquent medical bill in the amount of \$25; 1.i., a delinquent student loan account in the amount of \$3,866; 1.j., a delinquent student loan account in the amount of \$7,815; 1.k., a delinquent student loan account in the amount of \$1,934; 1.l., a delinquent telephone bill in the amount of \$739; 1.m., a delinquent medical bill in the amount of \$31; 1.n., a debt owed to a creditor in the amount of \$399; and 1.o., a delinquent telephone bill in the amount of \$264.

Applicant's background investigation reveals that she was married in September 2001. She separated from her husband in October 2002, and remained separated for ten years, until they divorced in June 2012. She is a single parent with three sons from different fathers. She provides all of their financial support and receives no financial

assistance from their fathers. This has caused or contributed to her financial problems. (Government Exhibit 6.)

Applicant indicated in her answer to the SOR that she would have the bills in question paid off by October 2014. (See Government Exhibit 3.) She has provided no documentary evidence to show that any of the delinquent debts listed in the SOR have been paid or are currently being paid. She provides no explanation with respect to the final disposition of these debts nor any supporting documentation that any of them have been resolved. Without more, Applicant is still held responsible for the debts.

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.

Condition that could mitigate security concerns:

None.

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 Applicant remains delinquently indebted to each of the creditors set forth in the SOR. Except for the student loans, the debts alleged in the SOR were incurred shortly after her Chapter 7 bankruptcy, which was discharged in October 2010, and date back to at least 2011. There is no evidence of any efforts to repay the debts prior to or after receipt of the SOR. There is no evidence of even an attempt to pay the smallest of the debts, which is only \$71. In the absence of documentary evidence submitted in response to this FORM to show that Applicant has been able to attain some resolution on her delinquent debts and establish a track record of debt repayment, this concern must be decided against her in evaluating her suitability to have access to classified information.

Applicant's history of excessive indebtedness, without sufficient mitigation, demonstrates a pattern of unreliability and poor judgment. Applicant failed to provide proof of payment, receipts, or any documentation to demonstrate that she has, can, or will resolved her delinquent debts. There is nothing in the record to show that Applicant can live within her means. Without more, the Applicant has failed to establish that she is fiscally responsible. Furthermore, there is no evidence that she has received credit counseling to help her set a budget and learn to live within it, or that her finances are under control.

Under the particular circumstances of this case, Applicant has not met her burden of proving that she is worthy of a security clearance. She has not sufficiently addressed the delinquent debts in the SOR and, therefore, she does not have a concrete understanding of her financial responsibilities. Thus, it cannot be said that she has made a good-faith effort to resolve her past due indebtedness. She has not shown that she is or has been reasonably, responsibly or prudently addressing her financial situation. Applicant has not demonstrated that she can properly handle her financial affairs or that she is fiscally responsible. Her debts are significant. Assuming that she demonstrates a history and pattern of fiscal responsibility, including the fact she has not acquired any new debt that she is unable to pay, she may be eligible for a security clearance sometime in the future. However, she is not eligible now. Considering all of the evidence, Applicant has not 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. There is no evidence in the record to show that Applicant has done anything to resolve her debts. In fact, from what is presented, Applicant could benefit from intense financial counseling. In this case, none of the mitigating conditions are applicable. Accordingly, I find against the 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 poor judgement, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

I have considered all of the evidence presented. It does not mitigate the negative effects of her history of financial indebtedness and the effects that it can have on her ability to safeguard classified information. On balance, it is concluded that Applicant has not overcome the Government’s case opposing her request for a security clearance. Accordingly, the evidence supports a finding against 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:		Against the Applicant.
	Subpara. 1.a.	Against the Applicant.
	Subparas. 1.b.	Against the Applicant.
	Subpara. 1.c.	Against the Applicant.
	Subparas. 1.d.	Against the Applicant.
	Subpara. 1.e.	Against the Applicant.
	Subpara. 1.f.	Against the Applicant.
	Subparas. 1.g.	Against the Applicant.
	Subpara. 1.h.	Against the Applicant.
	Subparas. 1.i.	Against the Applicant.
	Subpara. 1.j.	Against the Applicant.
	Subpara. 1.k.	Against the Applicant.
	Subparas. 1.l.	Against the Applicant.
	Subpara. 1.m.	Against the Applicant.
	Subparas. 1.n.	Against the Applicant.
	Subpara. 1.o.	Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge