



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



In the matter of:)
)
-----) ISCR Case No. 14-02349
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Department Counsel
For Applicant: *Pro se*

May 26, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on February 18, 2014. (Government Exhibit 2.) On July 24, 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 DOHA 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 in writing on August 15, 2014, in which she 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 the Applicant on or about January 13, 2015. The Applicant received the FORM on January 26, 2015. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. The Applicant submitted a reply to the FORM on February 11, 2015. This case was assigned to the undersigned on March 19, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 31 years old and lives with her partner. She has a high school diploma and some community college. She is employed with a defense contractor as an Office Manager and 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.

The Applicant admits the allegations set forth in subparagraphs 1.a., and 1.b., of the SOR under this guideline. She denies the allegation set forth in subparagraph 1.c. (Government Exhibit 3.) Credit Reports of the Applicant dated March 13, 2014; and January 7, 2015, reflect that the Applicant was indebted to each of the three separate creditors in an amount totaling in excess of \$18,000. (Government Exhibits 6 and 7.)

Applicant has been employed on a full time basis since at least 2004. She attributes her delinquent debt to her partner's unemployment and underemployment which began in mid-2011. Applicant's income alone is insufficient to meet their combined expenses. Thus, Applicant fell behind on her bills, and accumulated debt that she could not afford to pay. (See Answer to SOR.) Applicant states that in May 2008 she and her partner purchased a house. In June 2008 her partner suffered a severe knee injury and was immediately put on worker's compensation until about June 2011. During this time he underwent three surgeries, knee reconstruction and extensive physical therapy with a 45% disability to his right knee. Her partner can no longer go back to the roofing business and is pursuing other employment.

According to her credit reports, the following three delinquent debts were outstanding: 1.(a), a mortgage account owed to a bank in the amount of \$17,812, was in foreclosure status with a total loan balance of \$199,802. Foreclosure proceedings have been initiated. (Government Exhibit 7.) 1.(b), a delinquent credit card placed in collection in the amount of \$565 was used to pay a vet bill. (Government Exhibit 7.) Applicant states that she plans to pay this debt within the next 30 days. (See Applicant's Response to FORM.) 1.(c), a debt owed to a library was placed into collection in the amount of \$60. Applicant paid the debt in March 2014. (Government Exhibit 3, and Applicant's response to the FORM, enclosure attachment 2.)

Applicant stated that in an effort to resolve some of her debt, she sold some of her personal possessions. She became current with her mortgage, which had fallen behind, for a while, and the lender decided not to follow through with foreclosure at that time. In January 2015 Applicant once again fell behind on her mortgage. This time in

the amount of \$3,136, (which is two monthly payments), with a total balance owed of \$193,000. (Government Exhibit 7.)

Applicant states that her intention is to pay off her delinquent debt. She has, however, failed to submit any evidence to show that she can maintain fiscal responsibility for any sustained period of time. She has not explained how she can afford to pay her debts.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because she has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant completed a security clearance application dated February 18, 2014, and answered, "NO," to a series of questions concerning her finances. (Government Exhibit 4.) Section 26 asked, "In the past seven years, have you had any possessions or property voluntarily or involuntarily repossessed or foreclosed? . . . In the past seven years have you defaulted on any type of loan? In the past seven years, have you had bills or debts turned over to a collection agency? . . . In the past seven years, have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? . . . In the last seven years have you been over 120 days delinquent on any debt not previously entered? . . . Are you currently over 120 days delinquent on any debt?" Applicant answered, "NO," to each of the questions. These were false responses. She failed to list the delinquent debts set forth above. (See Applicant's Answer to SOR.)

Applicant claims that at the time she completed the security clearance application in March 2014, she should have answered, "Yes," to the questions about default on loans, charge off of a credit card, 120 days delinquent in the last seven years, and currently 120 days delinquent. Applicant claimed, however, that she did not answer, "Yes," in response to the questions because she was confused on the terminology. She believes her nerves may have gotten the best of her. This excuse is not credible. The questions are not complicated or complex. Applicant knew or should have known to answer the questions truthfully and candidly, which she did not.

After reviewing the eQIP, Applicant stated that she noticed other mistakes that were not mentioned in her FORM. She was intimidated by the process and should have reviewed her responses with her security officer or her supervisor before it was submitted. She states that she was unaware that she could ask for help. She assumed that she was to complete it on her own. She now realizes the importance of the document and the attention to detail she should have taken. (Applicant's response to the FORM.)

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 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.

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Conditions that could raise a security concern:

16.(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

16.(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgement, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Conditions 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, dishonesty or conduct 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 regard to her personal conduct, Applicant was not truthful and candid with the Government on her security clearance application when she intentionally omitted relevant information concerning her finances. At the time she completed the application, she knew or should have known that she had several delinquent debts. The only reasonable conclusion for not revealing the truth concerning her delinquent debts is that she did not want the Government to know about them. This misconduct is inexcusable. I find that she deliberately concealed the information from the Government on the application.

Applicant’s finances are just as bad. She has paid one of her debts in the amount of \$60. She states that she plans to pay her delinquent credit card debt that is owing in the amount of \$565 within the next 30 days. Since this investigation started, she has been severely delinquent on her house payment to the point that foreclosure proceedings were started. She sold some of her possessions and brought her mortgage current. Now she is once again falling delinquent on her mortgage payments. There is nothing in the record that demonstrates that she can remain fiscally responsible. Given the fact that her household finances are not what they used to be, her expenses may simply be more than she can handle. This type of misconduct is what the Government is trying to protect against by placing strict requirements on

security clearance eligibility. Presently, Applicant remains excessively indebted, and her dishonesty has not been mitigated.

Under Guideline E (Personal Conduct), Disqualifying Condition 16.(a) *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*, and 16.(c) *credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgement, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information* apply. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

Furthermore, the Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F). The 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.

Applicant's history of financial indebtedness has not been mitigated. She remains excessively indebted and has not demonstrated that she is fiscally responsible. Applicant must show that she can and will resolve her debts. She has not shown an ability to pay her delinquent debts or live within her means. At this time, there is insufficient evidence of financial rehabilitation. Applicant has not demonstrated that she can properly handle her financial affairs.

Applicant has not met her burden of proving that she is worthy of a security clearance. She has paid off one small delinquent debt. Admittedly, she brought her mortgage that was severely delinquent current, but is now, once again, falling behind on her house payments. Considering all of the evidence, the 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. Mitigating Condition 20.(b) *the conditions 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* arguably applies, but is not controlling. It is noted that Applicant's partner has suffered some medical problems in the past that adversely effected the household income. However, even now, Applicant

continues to have difficulties paying her bills. Accordingly, I find against 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 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 financial indebtedness and her personal conduct, and the effects it can have on her ability to safeguard classified information. On balance, it is concluded that the Applicant has not overcome the Government’s case opposing her request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 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.
Subpara. 1.b.	Against the Applicant.
Subpara. 1.c.	For the Applicant.
Paragraph 2:	Against the Applicant.
Subpara. 2.a.	Against the Applicant.

DECISION

In light of all the circumstances presented by the record in theris 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

