



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02147

Appearances

For Government: Chris Morin, Department Counsel
For Applicant: *Pro se*

May 31, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on August 25, 2014. (Government Exhibit 3.) On October 31, 2015, 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 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 November 24, 2015, 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 or about December 25, 2015. Applicant received the FORM on January 4, 2016. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant did not submit a reply to the FORM. This case was assigned to the undersigned on April 1, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 29 years old, and is unmarried. She has a Bachelor's degree in Computer Engineering. She is employed for a defense contractor as a Compensation Systems Analyst. She 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.

There are seven¹ delinquent debts set forth in the SOR totaling in excess of \$25,000. Applicant admitted each of the allegations set forth in the SOR under this guideline, except for allegation 1.h., which she only denies because she disputes the amount owed. Credit reports of the Applicant dated September 9, 2014, and August 31, 2015, which include information from all three credit reporting agencies, indicate that Applicant is indebted to each of the creditors listed in the SOR. (Government Exhibits 4 and 5.)

Applicant states that her financial problems started at the end of 2013 and through 2014. She attributes them to her mistaken decision to make a career change that was not successful, which ultimately caused her life to completely fall apart. During this period, her debts became delinquent and owing. She has not yet been able to recover from this mistake. She states that she has contacted all of her creditors to let them know of her current financial circumstances. She takes full responsibility for her delinquent debts and plans to pay them when she is able. She states that she needs an opportunity to "get back on her feet" to properly take care of her debts. Since August 2014, she has been working full time for her current employer. (Government Exhibit 3.)

There is no documentary evidence in the record to show that Applicant has done anything to resolve her delinquent debts. At this time, the following delinquent debts are overdue and owing:

1.a., a delinquent debt owed to a creditor for an account that was placed for collection in the approximate amount of \$2,389. Applicant admits the debt.

¹ The Government withdrew allegation 1.e., as it is a duplicate of the debt alleged in allegation 1.h. (See, Government Exhibit 4.)

1.b., a delinquent debt owed to a creditor for a student loan account that was past due in the approximate amount of \$1,782, with a total balance of about \$9,379. Applicant admits the debt.

1.c., a delinquent debt owed to a bank for an account that was charged off in the approximate amount of \$5,782. Applicant admits the debt.

1.d., a delinquent debt owed to a creditor for an account that was charged off in the amount of \$274. Applicant admits the debt.

1.e., this allegation was a duplicate of the debt set forth in 1.h., and was withdrawn by the Government. Accordingly, this allegation is found for the Applicant.

1.f., a delinquent debt owed to a creditor for an account that was charged off in the approximate amount of \$1,002. Applicant admits this debt.

1.g., a delinquent debt owed to a creditor that was placed for collection in the approximate amount of \$83. Applicant admits the debt.

1.h., a delinquent debt owed to a creditor for an account that was placed for collection in the approximate amount of \$31,392. Applicant denied the debt. She contends that the vehicle was sold and the debt was reduced to \$11,913. She states that the debt was further reduced by a judgment in small claims court to \$7,500. She states that she owes this creditor for three accounts that total approximately \$10,000.

Applicant has failed to respond to the FORM. There is no evidence in the record to show that Applicant has done anything to address any of the delinquent debts set forth in the SOR, even the smallest debt owed in the amount of \$83. Absent compelling documentary evidence that Applicant has acted responsibly and in good faith to repay her financial obligations, or established a track record of repayment, or otherwise has a substantiated basis to dispute the legitimacy of the delinquent debt, the allegations in the SOR have not been mitigated. Based upon the evidence presented, each of the delinquent debts listed in the SOR remain owing.

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:

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;
- 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 that 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 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 presented shows that Applicant incurred a number of delinquent debts in 2013-2014 that she has still been unable to pay. She states that she has contacted her creditors and informed them of her financial situation. She states that she plans to pay her debts when she "gets back on her feet." There is no documentary evidence in the record to show that the Applicant has made a good faith effort to resolve her debts. Without compelling documentation showing that Applicant has made financial arrangements and followed these arrangements to meet her past-due financial obligations, she has not shown the requisite good judgment, reliability, or

trustworthiness that is necessary in order to be eligible for access to classified information.

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. None of the mitigating conditions are applicable. Applicant has been working for her current employer since August 2014. She has not made even one payment toward resolving any of the delinquent debts set forth in the SOR. She has not shown efforts to obtain financial counseling. In fact, there is no evidence to show a sufficient ratio of current income to debt and expenses to avoid future financial delinquencies. She has not made a good-faith effort to satisfy her delinquent debts. In fact, she has shown that she is not financially responsible.

I have also considered the “whole-person concept” in evaluating Applicant’s eligibility for access to classified information. From the evidence presented, Applicant has not demonstrated a pattern of financial responsibility, as she has not addressed any of the delinquent debts set forth in the SOR. 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. It appears that she has simply ignored her delinquent debts. She has not demonstrated that she can properly handle her financial affairs.

Under the particular facts of this case, the totality of the conduct forth above, when viewed under all of the guidelines as a whole, support a whole-person assessment of poor judgement, untrustworthiness, unreliability, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

A security clearance is a privilege, not a right. In order to meet the qualifications for access to classified information, it must be determined that the applicant is and has been sufficiently trustworthy on the job and in her everyday life to adequately protect the Government’s national interest. Applicant has not met her burden of proving that she is worthy of a security clearance. Overall, based upon the seriousness of the conduct outlined here, the Applicant has not demonstrated that she is sufficiently trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

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 failed to 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 E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1:		Against Applicant.
Subpara.	1.a.	Against Applicant.
Subpara.	1.b.	Against Applicant.
Subpara.	1.c.	Against Applicant.
Subpara.	1.d.	Against Applicant.
Subpara.	1.e.	Against Applicant.
Subpara.	1.f.	For the Applicant.
Subpara.	1.g.	Against Applicant.
Subpara.	1.h.	Against 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 Applicant. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge