

DATE: August 27, 2007

In Re:)
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SSN: -----)

Applicant for Security Clearance)
_____)

ISCR Case No. 06-25012

**DECISION OF ADMINISTRATIVE JUDGE
DARLENE LOKEY ANDERSON**

APPEARANCES

FOR GOVERNMENT

Jennifer I. Goldstein, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's delinquent financial indebtedness has not been resolved. Her omission on her security clearance application concerning her financial indebtedness was intentional and has not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On March 30, 2007, the Defense Office of Hearings and Appeals (DOHA), 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 May 7, 2007, and requested a hearing before DOHA Administrative Judge. This case was assigned to the undersigned on June 22, 2007. A notice of hearing was issued on July 5, 2007, scheduling the hearing for July 30, 2007. At the hearing the Government presented seven exhibits. The Applicant presented no exhibits but testified on her own behalf. The record was left open for ten days after the hearing, until the close of business on August 9, 2007, to give the Applicant an opportunity to submit supporting documentation. The Applicant submitted three Post-Hearing Exhibits, consisting of five pages, referred to as Applicant's Post-Hearing Exhibits A through C. The official transcript (Tr.) was received on August 8, 2007.

FINDINGS OF FACT

The Applicant is 60 years old, unmarried, and has a Bachelors of Science Degree in Production Technology/Industrial Management. She is employed by a defense contractor as a Manager of Quality Engineering and is seeking to obtain her 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 to engage in illegal acts to generate funds.

The Applicant is indebted to sixteen different creditors for a total of at least \$38,600.00. (*See* Government Exhibits 2, 3, 4, 5, 6, and 7). Since 1997, the Applicant has demonstrated poor financial decisions that have resulted in a tax lien, a judgment, a Chapter 7 bankruptcy in 1997, and a Chapter 13 bankruptcy that was filed in November 2006.

The Applicant contends that for many years she has battled the problem of having multiple errors on her credit reports. She testified that all along she has tried to keep her credit in good standing. She says that she has made many attempts over the years, writing the credit bureaus in an effort to clean up her credit reports. She finds that for a while her credit report is in good standing

and then she later discovers that the debt that was at one time removed is once again reflected as delinquent on her report. She believes that because her twin brother's name is spelled similarly and his wife often used the Applicant's name for purposes of credit, their credit was mixed up with the Applicant's.

With regard to the debts listed in the SOR, the Applicant admits the debts listed in 1(f), 1(o), 1(p), 1(s), and 1(t) and denies the others. She testified that the others are either not her debts, or should not be reflected as outstanding as they are currently being paid through her Chapter 13 bankruptcy. (See Applicant's Post-Hearing A).

In 1997, the Applicant was forced to file Chapter 7 Bankruptcy because she was laid off from her job and was unable to find suitable employment to cover her expenses. When she did start working, she did not pay enough in taxes and a tax lien was entered against her in 1997.

In 2002, the Applicant received notice that she had outstanding taxes due in the amount of \$17,000.00 or \$18,000.00 including late fees. She made an arrangement with the Internal Revenue Service and started paying them \$400.00 monthly toward her back taxes. When she filed for Chapter 13 in 2006, she rolled this payment into her payment plan with the trustee.

The Applicant has also co-signed for a car for her daughter. Her daughter sold the car to someone else, who essentially took over the payments for a while. He stopped making payments and the car was subsequently repossessed in 2003. The Applicant is now responsible for this debt.

In January 2006, the Applicant purchased a house and at that time she believes that her credit was in good standing because she was able to get the loan. By August 2006, foreclosure proceedings had been started. (Tr. p. 73). She testified that she had counted on obtaining a home improvement loan to pay for her landscaping expenses, however she was unable to get it. She had to use money that she did not have to pay for her backyard in the amount of \$6,000.00. It was about this time that her brother passed away, and she paid for his funeral expenses in the amount of about \$4,000.00. She also received notice that she owed some unexpected property taxes in the amount of \$9,000.00, that had to be paid.

By November 2006, the Applicant had become so indebted she knew that she had to do something about it. She filed for Chapter 13 and is now in the process of paying her debts through a payment plan arranged and agreed upon between herself and the court trustee. (See Government Exhibit 6). Since January 2007, the Applicant has been making monthly payments to the trustee in the amount of \$1,679.00 by cashiers check which is required under the plan for 60 months. (Tr. p. 90). The Applicant is planning on refinancing her house in November 2007, at which time she plans to get out of bankruptcy by paying off her creditors. (Tr. p. 90).

Although she is earning over \$100,000.00 annually, after paying the court trustee under the Bankruptcy plan and her other monthly expenses, the Applicant does not have much money left over. She indicates that she is fortunate to receive travel per diem from her employer which has been helpful in paying for food and other miscellaneous expenses.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because she intentionally falsified material aspects of her personal background during the clearance screening process.

The Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP), otherwise known as a security clearance questionnaire dated August 18, 2005. Question 27(d) asked if in the last 7 years, has she had any judgments against her that have not been paid. The Applicant answered, "NO". (See Government Exhibit 1). The Applicant testified that she did not believe that she had any judgments against her at the time. There is no evidence that she had any judgments within 7 years.

Question 28, of the same questionnaire asked her if in the last seven years, have you been over 180 days delinquent on any debts. The Applicant answered "NO." (See Government Exhibit 1). This was not an accurate response. The Applicant explained that at the time she completed the application she believed that her credit was in good standing and that she was not over 180 days delinquent on any of her debts. This obviously could not be true based upon the Applicant's bankruptcy records.

With the number of delinquent debts the Applicant had in 2005, and considering her past financial history, there is no explanation as to why she did not answer question 28 correctly, other than the fact that she intentionally sought to falsify her security clearance questionnaire. She knew or should have known about her extensive financial delinquencies and should have revealed them on her security clearance application. Accordingly, I find that the Applicant did deliberately fail to list her delinquent financial history on her security clearance application. Accordingly, I find that the Applicant did deliberately attempt to conceal this information from the Government.

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;

19(c) a history of not meeting financial obligation;

19(e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Conditions that could mitigate security concerns:

None.

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.

Condition 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

Condition that could mitigate security concerns:

None.

_____ In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature 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 voluntariness of participation

- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- 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 predicted 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 or dishonesty 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 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) and falsified her security clearance application (Guideline E). 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.

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. With respect to her finances, the Applicant history of poor financial management and the fact that she is currently in her second Bankruptcy in less than ten years, demonstrates that she is not financially responsible. Many of her debts remain outstanding and delinquent, as she has only been paying her debts under the current Bankruptcy plan for eight months. She has made some effort to resolve her indebtedness, however there is no evidence of financial rehabilitation. Furthermore, the Applicant has not demonstrated that she can properly handle her financial affairs. Under Guideline F (Financial Considerations), *Disqualifying Conditions 19(a) inability or unwillingness to satisfy debts; 19(c) a history of not meeting financial obligation; 19(e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis* apply. None of the mitigating conditions apply. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

The Applicant deliberately failed to reveal her delinquent financial history in response to question 28 on her security clearance application. With respect to 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* applies. None of the mitigating conditions apply. Accordingly Guideline E, except allegation 2(a), is found against the Applicant.

On balance, it is concluded that the Applicant has failed to 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 for the Government's Statement of Reasons.

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. 1a.:	Against the Applicant.
Subpara. 1 b:	Against the Applicant.
Subpara. 1 c:	Against the Applicant.
Subpara. 1d:	Against the Applicant.

Subpara. 1e: Against the Applicant.
Subpara. 1f: Against the Applicant.
Subpara. 1g: Against the Applicant.
Subpara. 1h: Against the Applicant.
Subpara. 1 i: Against the Applicant.
Subpara. 1.j: Against the Applicant.
Subpara. 1k: Against the Applicant.
Subpara. 1.l: Against the Applicant.
Subpara. 1.m: Against the Applicant.
Subpara. 1.n: Against the Applicant.
Subpara. 1.o: Against the Applicant.
Subpara. 1.p: Against the Applicant.
Subpara. 1.q: Against the Applicant.
Subpara. 1.r: Against the Applicant.
Subpara. 1.s: Against the Applicant.
Subpara. 1.t: Against the Applicant.

Paragraph 2 Against the Applicant.

Subpara. 2.a.: For the Applicant.
Subpara. 2.b.: 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