



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



In the matter of:)
)
-----) ISCR Case No. 07-03906
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

September 24, 2008

Decision

Lokey-Anderson, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on September 14, 2005. On June 29, 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 July 20, 2007, and August 20, 2007, 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 June 19, 2007. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on July 7, 2007, and she submitted no reply. The case was assigned to the undersigned for resolution on September 15, 2008. Based upon a review of the case file, pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 31 years old. She is employed by a defense contractor and is seeking to obtain a 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 of having to engage in illegal acts to generate funds.

The Statement of Reasons sets forth 16 separate creditors and two worthless checks totaling approximately \$25,000.00. The Applicant admits each of the allegations set forth in the SOR, except allegation 1(h). Credit reports of the Applicant dated October 20, 2005, April 9, 2007 and September 20, 2007, reflect each of the delinquent debts listed in the SOR. (See Government Exhibits 8, 9, 10 and 11).

Since receiving the SOR, the following debts set forth in the SOR have either been paid off by the Applicant, or she has consolidated the debt with the assistance of a consumer credit counselor, and she is making monthly payments to resolve them. (See Government Exhibits 3 and 5).

Allegation 1(a), a delinquent debt for a medical bill in the amount of \$57.00 has been paid. Allegation 1(b), a delinquent debt for a medical bill in the amount of \$86.00 has been paid. Allegation 1(c), a delinquent debt for a medical bill in the amount of \$44.00 has been paid. Allegation 1(d), a delinquent debt owed to a creditor in the amount of \$3,927.00 has been consolidated with other debt and is being paid off on a monthly basis. Allegation 1(e), a delinquent debt owed to a telephone company in the amount of \$317.00 has been consolidated with other debt and is being paid off on a monthly basis. Allegation 1(f), a delinquent debt owed to a creditor in the amount of \$373.00 has been consolidated with other debt and is being paid off on a monthly basis. Allegation 1(g), a delinquent debt owed to a creditor in the amount of \$3,927.00 has been consolidated with other debt and is being paid off on a monthly basis. The Applicant denies allegation 1(h), a delinquent debt owed to a creditor in the amount of \$669.00, and it remains outstanding. Allegation 1(i), a delinquent debt owed to a power company in the amount of \$512.00 has been consolidated with other debt and is being paid off on a monthly basis. Allegation 1(j), a delinquent debt owed to a creditor in the amount of \$348.00 has been paid off. Allegation 1(k), a delinquent debt owed to a creditor in the amount of \$904.00 has been paid off. Allegation 1(l), a delinquent debt owed to a creditor in the amount of \$506.00 is being consolidated with other debt and payment will begin in September 2007. Allegation 1(m), a delinquent debt owed to a creditor in the amount of \$289.00 is being consolidated with other debt and payment will begin in September 2007. Allegation 1(n), a delinquent debt owed to a creditor in the amount of \$211.00 is being paid through a consolidation program. Allegation 1(o), a

delinquent debt owed to a creditor in the amount of \$1,903.00 is being paid through a consolidation program. Allegation 1(p), a delinquent debt owed to a creditor in the amount of \$1,212.00 is being paid through a consolidation program.

In May 1999, the Applicant wrote a worthless check in the amount of \$57.00 and in May 2000, she wrote another worthless check in the amount of \$150.00. Both of these debts have since been paid. The Applicant has made a good faith effort to resolve her delinquent indebtedness.

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

The Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP) dated September 14, 2005. Question 28 for the application asked her if in the last 7 years had she been over 180 days delinquent on any debts? The Applicant answered, "NO". (See Government Exhibit 6). She failed to list any of her delinquent debts, including those set forth in the SOR.

The Applicant falsified material facts on her security clearance application when she failed to list her financial delinquencies. The Applicant claims that she did not know about the debts when she completed the security clearance application and only learned about them when she was interviewed by the DoD investigator. (See Government Exhibit 3). This is not plausible. The sheer number of bad debts makes it impossible to believe that she was not aware of her bad debt. Clearly the Applicant knew of her bad debt and intentionally sought to conceal the information from the government when she filled out the security clearance application.

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.

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;

20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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.

Conditions 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 and 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 dishonest (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. Admittedly, the Applicant has made a good faith effort to resolve her past due indebtedness. She has paid off some of her debt. She has consolidated other debt and is paying it off in a systematic fashion, namely on a monthly basis. She plans to continue making payments toward the debts until they are paid in full. She understands the importance of paying her bills on time and not living beyond her means. Under the circumstances, she has made a good faith effort to resolve her indebtedness, and there is evidence of financial rehabilitation. The Applicant has demonstrated that he 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*; and 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. 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).

On the other hand, the evidence shows that the Applicant intentionally falsified her security clearance application 2005, when she deliberately failed to disclose her delinquent debts. This intentional deception goes directly to the Applicant's credibility. I cannot find that she is sufficiently trustworthy to have access to classified information. The Government relies heavily upon the integrity and honesty of clearance holders. It is a negative factor for security clearance purposes when an Applicant has deliberately provided false information about material aspects of her personal background.

Under Personal Conduct, Guideline E, 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 mitigation conditions are applicable. Accordingly, Guideline E is found against the Applicant.

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 under all of the guidelines viewed 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, however, it does not come close to mitigating the negative effects of her dishonesty and the effects that it can have on her ability to safeguard classified information.

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 Paragraph 2 of the SOR. Paragraph 1 is found for the Applicant.

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:	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.g.:	For the Applicant.
Subpara. 1.h.:	For the Applicant.
Subpara. 1.i.:	For the Applicant.
Subpara. 1.j.:	For the Applicant.
Subpara. 1.k.:	For the Applicant.
Subpara. 1.l.:	For the Applicant.
Subpara. 1.m.:	For the Applicant.
Subpara. 1.n.:	For the Applicant.

Subpara. 1.o.: For the Applicant.
Subpara. 1.p.: For the Applicant.
Subpara. 1.q.: For the Applicant.
Subpara. 1.r.: 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 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