



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-06543
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Le'i, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 10, 2008

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**Decision**

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LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on March 2, 2006. On September 21, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 a clearance should be denied or revoked.

The Applicant responded to the SOR on October 17, 2007, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on December 3, 2007. A notice of hearing was issued on December 17, 2007, originally scheduling the hearing for January 10, 2008. Applicant requested a continuance based upon good cause and the hearing was rescheduled for January 30, 2008. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6. The Applicant presented one exhibit, referred to as Applicant's

Exhibit A. The record remained open until March 3, 2008 to allow the Applicant to submit additional documentation. The Applicant submitted five Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A through E. She also testified on her own behalf. The official transcript (Tr.) was received on February 11, 2008.

### **FINDINGS OF FACT**

The following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 31 years old, married, and has a high school diploma and one year of college. She is employed by a defense contractor as a Human Resource Director 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). After a complete and thorough review of the evidence in the record, and upon due consideration of the same, 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 a security clearance because she is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant admits each of the allegations set forth in the SOR. She is indebted to 23 separate creditors totaling approximately \$44,000.00. Credit reports of the Applicant indicate that this is mainly credit card debt. (See Government Exhibits 4,5 and 6). Her financial problems started in October 2003, when she lost her job, a month or so after she had purchased a house. (See Applicant's Post-Hearing Exhibit D). In an effort to keep from losing their house, in August 2004, the Applicant and her husband filed for Chapter 13 Bankruptcy. They made the monthly payments to the Bankruptcy trustee until the Applicant's husband lost his job. In October 2004, her husband found a job for a brief period, but was then laid off due to lack of work. Unable to afford to make further payments, the Chapter 13 Bankruptcy was dismissed on May 11, 2005. They lost their home in August 2005.

Her husband has experienced several periods of unemployment starting in 2004, when he was laid off. He found another job in January 2005, but was injured on the job and went out on disability in June 2005. He was on disability until September 2007, at which time he was laid off again. He is presently unemployed. (See Applicant's Post-Hearing Exhibit C).

The Applicant was advised by her mother and grandmother to try and re-establish her credit by opening up two more credit card accounts. Instead of improving her credit, it only made the situation worse.

The Applicant was unemployed from October 2003 through June 2004. (See Applicant's Post-Hearing Exhibit D). She began working for her current employer in April 2005, as an Administrative Assistant, earning \$1,800.00 a month. In July 2006, she was promoted to Human Resource Director, earning \$2,400.00 a month.

In an effort to resolve her indebtedness, the Applicant sought out credit counseling and was advised that she needed to file Chapter 13 bankruptcy in order to keep her home. In November 2007, the Applicant consulted with an attorney who told her that she was eligible to file Chapter 7 Bankruptcy. She entered into a retainer agreement to pay the attorney \$1,800.00 to file the Bankruptcy. (See Applicant's Exhibit A). She inquired as to how to convert her Chapter 13 to a Chapter 7. The Applicant did not fully understand the difference between "discharged" and "dismissed" and erroneously thought that for the past two years, she no longer owed the delinquent debts because she had not been contacted by any of the creditors. (Tr. p 40). It was explained to her by the attorney that she still owed each of the creditors. At that point, she made a down payment of \$300.00 toward the \$1,800.00 that it cost to file Chapter 7 bankruptcy with hopes of paying the remainder of the retainer when she received her income tax refund. The Applicant testified that she was planning on filing Chapter 7 Bankruptcy within the next two weeks. (See Tr. p. 50).

The record remained open following the hearing to allow the Applicant the opportunity to submit additional supporting documentation. She submitted four Post-Hearing Exhibits, one of which is a Bankruptcy Typing Agreement she entered into with a paralegal agency to prepare her Chapter 7 Bankruptcy for filing. (See Applicant's Post-Hearing Exhibit E). The Applicant decided to use a more affordable service to file her Chapter 7 bankruptcy than the attorney in order to use the difference to pay the debts that cannot be discharged in the Bankruptcy. (See Applicant's Post-Hearing Exhibit A).

Applicant states that her income tax returns were audited by the Internal Revenue Service and her refund is being withheld to pay state taxes. (See Applicant's Post-Hearing Exhibit A).

The Applicant also indicates that her husband is currently looking for employment and if he does not find it within the next two months, they are going to downsize from a house to an apartment. The Applicant's finances are tight. She is able to stay current on most of her monthly expenses but has had difficulties making her car payment. She just brought it current this month. (Tr. p. 34). Their financial situation will vastly improve when her husband finds employment.

Letters of recommendation and awards submitted on behalf of the Applicant indicate that she has been an exceptional performer on the job who demonstrates leadership, professional excellence, integrity, team spirit and a willingness to do whatever it takes to get the job done. She is a quick learner and has the propensity to learn the intricacies of what is required of her position. (See Applicant's Post-Hearing Exhibit B).

Applicant's performance appraisals reflect that she is meeting all requirements of her position and either exceeds expectations or is competent in all areas. (See Applicant's Post-Hearing Exhibit B).

## **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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

#### **Conditions that could raise a security concern:**

19.(a) inability or unwillingness to satisfy debts;

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 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, a security clearance 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 such access 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 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.

A number of circumstances beyond the Applicant's control caused her financial problems including her job lay off, her husband's series of lay offs and disability and his present unemployment. However, since April 2005, for the past three years, she has been gainfully employed. She testified that she was going to file Chapter 7 Bankruptcy in two weeks and the record remained open for that period. She has not yet filed Chapter 7 Bankruptcy, nor has she set up a payment schedule with her creditors. She remains excessively indebted in an amount in excess of \$40,000.00. She has not reduced her overhead and is barely able to meet her monthly obligations. To her credit, she has had some financial counseling and has recently hired a paralegal company to type a Chapter 7 bankruptcy petition for her. However, its simply too little, too late.

Upon review of her financial picture, it appears that she has no disposable income at the end of the month to pay her delinquent bills. Her decision to file Chapter 7 Bankruptcy is a legal remedy available to her under the circumstances, but she has failed to exercise the option. 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* are applicable. None of the mitigating factors apply. Her financial problems remain current, they are not isolated, and the Applicant has not initiated a prompt, good faith effort to repay her overdue creditors or otherwise resolve her debts.

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 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 classified information.

This Applicant has not demonstrated that she is trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

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 1 of 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. 1.a.:	Against the Applicant.
Subpara. 1.b.:	Against the Applicant.
Subpara. 1.c.:	Against the Applicant.
Subpara. 1.d.:	Against the Applicant.
Subpara. 1.e.:	Against the Applicant.
Subpara. 1.f.:	Against the Applicant.
Subpara. 1.g.:	Against the Applicant.
Subpara. 1.h.:	Against the Applicant.
Subpara. 1.i.:	Against the Applicant.
Subpara. 1.j.:	Against the Applicant.
Subpara. 1.k.:	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.  
Subpara. 1.u.: Against the Applicant.  
Subpara. 1.v.: Against the Applicant.  
Subpara. 1.w.: Against the Applicant.  
Subpara. 1.x.: Against the Applicant.

### **DECISION**

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

Darlene Lokey Anderson  
Administrative Judge