



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-11277
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Department Counsel
For Applicant: *Pro Se*

July 10, 2008

Decision

LOKEY-ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted her Questionnaire for National Security Positions (SF-86) on January 23, 2006. On November 29, 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 January 19, 2008, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 25, 2008. A notice of hearing was issued on May 1, 2008, and the hearing was scheduled for June 2, 2008. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7. The Applicant presented two exhibits, referred to as Applicant's Exhibits A and B. She also testified on her own behalf. The official transcript (Tr.) was received on June 12, 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 29 years old and unmarried. She is employed by a defense contractor as a Mail Room Supervisor 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 is indebted to 31 separate creditors totalling approximately \$40,000.00. Credit reports of the Applicant dated November 22, 2006; August 20, 2007; October 3, 2007; and March 5, 2008, reflect each of these delinquent debts. (See Government Exhibits 4, 5, 6 and 7). The Applicant denies many of the delinquent debts listed in the SOR, specifically allegations 1(b), 1(c), 1(f), 1(h), 1(i), 1(j), 1(k), 1(l), 1(m), 1(n), 1(q), 1(r), 1(s), 1(u), 1(w), 1(x), 1(z), 1(dd), and 1(ee). She admits the others. Although she testified that two of the debts were paid through garnishment, she presented no documentary evidence to establish that she has paid any of the debts listed in the SOR.

In 1999/2000, the Applicant claims that two people, namely her best friend and her aunt, stole her identity and used it to obtain credit in her name, which is reflected among the debts listed in the SOR. The Applicant is uncertain as to which debts listed in the SOR were fraudulently incurred by the perpetrators. She filed a police report of the incident. (See Applicant's Exhibit A).

In 2001, the Applicant got married, and they separated in February 2004. Following a one night stand, not with her husband, the Applicant found herself nine months pregnant and homeless for about a month in 2005. When she did find a place to live, her living arrangements were not stable. Her divorce from her husband was final in February 2006. Some of the debt listed in the SOR are joint debt incurred during the marriage. Other debts listed in the SOR, the Applicant is aware of and has not paid because she cannot afford to, and others she simply has no knowledge of. She has few financial records as they were destroyed by water damage caused from a leak in the Applicant's trunk. The Applicant has not contacted her creditors for over a year to determine the status of the debts or for any other reason.

The Applicant started working for her current employer in January 2006. She earns \$14.25 per hour and works full time and overtime when she can get it. In 2006,

she moved into her present home, which is low income housing. She is a single parent who provides all of the financial support for herself and her son, including his medical insurance, medicine and co-pays for health care. She does not receive any public assistance such as food stamps or Medical. After paying her regular monthly expenses such as her rent, car payment, groceries, cell phone and utilities, she often has to ask her mother and aunts for money. She has no bank accounts or assets of any kind. She indicates that she is willing to pay her debts, but can only make small payments because she does not have much money. (Tr. p. 53).

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 a Questionnaire for National Security Positions dated January 23, 2006. Section 28 (a) asked her if in the last 7 years, has he been over 180 days delinquent on any debts. The Applicant responded, "NO". (Government Exhibit 1). This was a false answer. Question 28(b) of the same application asked her if she was currently over 90 days delinquent on any debts. The Applicant again answered, "NO". (Government Exhibit 1). This was also a false answer. The Applicant should have answered "YES" to both questions as evidenced by the numerous delinquent debts set forth in her credit reports. The Applicant explained that when she completed the security clearance application, she was assisted by an individual who worked at her company. The Applicant contends that she told the individual that she had financial delinquencies and that she was a victim of identity theft. The individual told her to answer, 'NO" to the questions because she was presently current with her student loan payments and other debts. The Applicant testified that the individual who assisted her in completing the application is no longer employed with the company as there is a big turnover.

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.

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, 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 him 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 his security clearance eligibility.

The evidence shows that the Applicant has experienced some difficult times including identity theft, a separation and divorce, a pregnancy out of wedlock, unemployment and homelessness. However, since 2006, she has been employed full time but has done nothing to straighten up her delinquent financial affairs. 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 conditions 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.

In addition, the Applicant intentionally failed to answer questions 28(a) and 28(b) accurately and truthfully on her Electronic Questionnaire for Investigations Processing. Realizing the extensive nature of her delinquent debts and her past credit history, it is clear that she deliberately failed to acknowledge her delinquent debts in response to the questions. Under Guideline E (Personal Conduct), Disqualifying Conditions 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, I find that the Applicant intentionally sought to conceal material information from the Government on his security clearance application.

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. The Applicant has not even begun the process of financial rehabilitation and she has a long way to go before her financial affairs are in order.

The 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) and Guideline E (Personal Conduct).

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 and 2 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.
- Subpara. 1.y.: Against the Applicant.
- Subpara. 1.z.: Against the Applicant.
- Subpara. 1.aa.: Against the Applicant.
- Subpara. 1.bb.: Against the Applicant.
- Subpara. 1.cc.: Against the Applicant.
- Subpara. 1.dd.: Against the Applicant.
- Subpara. 1.ee.: Against the Applicant.
- Subpara. 1.ff.: Against the Applicant.

Paragraph 2: Against the Applicant.
Subpara. 2.a.: Against the Applicant.
Subpara. 2.b.: 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