



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



In the matter of:)
)
-----) ISCR Case No. 07-17178
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: *Pro Se*

February 2, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on July 24, 2007, and July 25, 2007. (Government Exhibits 5 and 6). On August 19, 2008, 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.

Applicant answered the SOR in writing on September 29, 2008, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on October 29, 2008. A notice of hearing was issued on October 31, 2008, scheduling the hearing for December 9, 2008. The Government offered eleven exhibits, referred to as Government Exhibits 1 through 11, which were received without objection. Applicant called two witnesses and offered six exhibits, referred to as Applicant's Exhibits A through F. She also testified on her own behalf. The transcript of the hearing (Tr.) was received on December 17, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 53 years old and has a high school diploma and one year of college. She is employed by a defense contractor as an Industrial Security Specialist 3 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 Applicant has worked for her current employer for the past thirty-five years. She has filed bankruptcy on two occasions. The first time, on January 3, 1990, she filed for Chapter 7 bankruptcy protection and discharged liabilities in excess of \$32,000.00. (Government Exhibit 1). To help subsidize her mother's social security check, the Applicant provided her with financial assistance. At the time, her mother lived with her and her mother wanted to move out of the state. So, the Applicant helped finance the cost of her mother's move. The Applicant was left with all of the household expenses and the credit card bills. Nine months later, her mother wanted to move back. The Applicant again financially assisted her with the move. As a result, the Applicant became severely delinquent on her bills and filed bankruptcy.

On November 27, 2002, the Applicant filed for Chapter 7 Bankruptcy relief again. This time, liabilities of over \$72,000.00 were discharged. (Government Exhibit 4). The Applicant explained that her sister died and left her daughter with the mortgage. The Applicant's mother wanted the Applicant to move into her sister's house to assist with the mortgage and keep the house from going into foreclosure. In July 2002, the Applicant moved into her sister's house with her niece. Applicant soon learned that the mortgage payment was more than she had initially thought, because her sister had a second trust deed that the Applicant was not aware of. Realizing this, the Applicant could not afford her sister's house payment and the money it took to pay for her mother's rent in the retirement home. Applicant's niece was laid off of her job and so she was unable to pay her part of the mortgage. The Applicant volunteered to work overtime but still could not afford her expenses.

Since 2002, the Applicant has demonstrated financial responsibility. She is current with all of her monthly expenses and she has no delinquent debts. (Applicant's Exhibit F and Government Exhibit 10).

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.

While working for her current employer, the Applicant received counseling in July 1996, for her second offense of failure to place regular ledger accounting on her timecard. She explained that she left work for the day and forgot to fill out her time card. She admits that this occurred but claims that this was an oversight on her part. A letter was also placed in her personnel file by her manger. (Government Exhibit 8).

Based upon an anonymous report made to the company hot line, the Applicant was investigated for improperly recording her time card. (Government Exhibit 8). Applicant explained that she was accused of leaving work early and not always working eight hours when her time card reflected that she had. The Applicant denies the misconduct. She explained that she did not always swipe out her badge every time she left her office. Sometimes, if others went to the door and swiped their badge, if the Applicant knew them, she would "tailgate" or enter behind them without swiping her badge. This procedure was permitted by the company. She entered and exited in this fashion and her badge did not always reflect the hours she actually worked. Applicant's manager, who thinks highly of her, testified that when he learned about the situation, he was puzzled because the records showed that sometimes there was no record of the Applicant even logging in for the day, or that she had logged off early. (Tr. p. 81). He explained that the Applicant told him that she had been taking care of sick and elderly mother. She would take lunch early and then return to work late and make up the hours. Her mother passed away earlier this year.

Applicant contends that she has always worked a full eight hour day, although she is unable to prove it. Applicant was given a memorandum of corrective action and a five days suspension by her manager.

Applicant's manager testified that since the above described incident, there was another case with similar circumstances that was investigated by the company and the charges were dropped against the employee. In light of this case, the Applicant's manager plans on meeting with the manager of human resources and asking for a review of the Applicant's case. He considers the Applicant to be honest, responsible and trustworthy, and highly recommends her for a position of trust.

Applicant's Facility Security Officer, who is also the Applicant's direct supervisor, testified that the Applicant serves as her right arm. The Applicant takes on the leadership role in the organization in terms of directing policy and procedure, providing guidance and instruction to employees and coworkers concerning security matters. She is responsible for many facets of security education at her facility. She provides security briefings as well as managing classification issues. Her work is considered to be of excellent quality, as she is very knowledgeable, timely, independent, multi-faceted and considered one of the best classification management specialist at the company. Applicant's supervisor further testified that the Applicant was encouraged to take flex

time during the period she was taking care of her sick mother. (Tr. p. 103). She states that the Applicant always left messages if she needed to leave early to take her mother to the doctor, or if she was going to be late because she needed to pick up her mother's prescriptions. (Tr. p. 104). Concerning the anonymous report accusing the Applicant of time card misconduct, the Applicant's supervisor testified that she was "caught off guard". She was never contacted concerning the investigation and was thus, unable to give her input. (Tr. p. 105).

In October 2004, the Applicant was called in for an interview with an investigator from her company who had ran a random credit card report that revealed that the Applicant had been using her company credit card for personal matters which was prohibited by the company. From January 2002 through March 2004, her employer accused her of taking cash advances on her company credit card during an eighteen month period. The Applicant admitted the violation, but argued that although she obtained the cash advances with her company credit card, she always paid the bill in full when the statement came in the very next month. She did not have any credit cards of her own because of her bad credit. Applicant was terminated in January 2005 for violating company policy. The Applicant obtained counsel and she was ultimately reinstated in November 2005. Her punishment was five days off without pay and the other time was considered an unpaid leave of absence.

In October 1987, the Applicant was arrested and charged with Petty Theft. She explained that during her lunch hour she went to a department store, purchased some panty hose and then put a two piece outfit into her bag without paying for it. As she was leaving the store, she was caught by security. She was found guilty, fined \$570.00 and placed on three years probation. (Government Exhibit 7).

Performance Reviews of the Applicant for 2004, 2006 and 2007, reflect that she "met expectations" or "exceeded expectations" in every category. (Applicant's Exhibit A). The Applicant received an award from her exceptional performance on the job. (Applicant's Exhibit B). Letters of recommendation from the two individuals in company Senior Management that testified reflect that they consider the Applicant to be honest, trustworthy and responsible. (Applicant's Exhibits C and D).

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 ones 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:

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.

Condition that could raise a security concern:

16.(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (3) a pattern of dishonesty or rule violations; and (4) evidence of significant misuse of Government or other employer's time or resources.

Condition that could mitigate security concerns:

17.(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or facts that caused untrustworthiness, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

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 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 that she has demonstrated questionable judgment (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 introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case. The Applicant filed for Chapter 7 Bankruptcy in 1990 and again in 2002. Now, she is no longer taking care of two households that included her mother's and hers. Her mother has passed away and she is only financially responsible for herself. She is current with all of her monthly expenses and has been paying her debts in a timely fashion. She has learned to live within her means. She is planning for her retirement and trying to save money to do so. She understands the importance of paying her bills on time. 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 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*; 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).

The evidence concerning the accusations against the Applicant for improper company time card reporting is weak at best. Her supervisor and manager gave her approval to work flex hours and she did so. Why the investigators did not contact her leadership regarding the matter is suspect. Applicant's explanation is understandable and reasonable under the circumstances. With respect to the improper use of the company credit card, the failure to place regular ledger accounting on her timecard, and her arrest for petty theft that occurred twenty-one years ago, the Applicant admits that she was wrong and that she has learned from her embarrassing and shameful mistakes. Based upon all of the evidence, including the favorable recommendations and the sincerity and honesty of her testimony, I find that she is sufficiently trustworthy to have access to classified information.

Under Personal Conduct, Guideline E, Disqualifying Condition 16.(d) *credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (3) a pattern of dishonesty or rule violations; and (4) evidence of significant misuse of Government or other employer's time or resources* applies. However, Mitigating Condition 17.(d) *the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or facts that caused untrustworthiness, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur* also applies. Accordingly, Guideline E is found for 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 good judgement, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

I have considered all of the evidence presented and it sufficiently mitigates the adverse information brought against her. On balance, it is concluded that the Applicant has overcome the Government's case opposing her request for a security clearance.

Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the SOR.

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.

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

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge