



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
| -----                            | ) | ISCR Case No. 08-03249 |
| SSN: -----                       | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Julie R. Mendez, Department Counsel  
For Applicant: *Pro Se*

March 30, 2009

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Questionnaire for Sensitive Positions dated November 14, 2007. On October 14, 2008, 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 in writing on November 6, 2008, 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 January 14, 2008. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on January 23, 2009, and she submitted no reply. The case was assigned to the undersigned for resolution on March 24, 2009.

## FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, the FORM and the exhibits. The Applicant is 32 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). 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 under this subparagraph. Credit reports of the Applicant dated December 7, 2007 and July 30, 2008, indicate that she remains indebted to nine separate creditors totaling the amount of approximately \$10,306.00. (Government Exhibits 5 and 6). None of the delinquent debts set forth in the SOR have been paid.

The Applicant's history of financial problems began in college. Most of the Applicant's delinquent debt was incurred between 2001 and 2004 with one debt becoming delinquent in 2007. Admittedly, the debts are old, have never been resolved, and have either been written off by the creditor or have automatically fallen off of her credit report under the Fair Credit Reporting Act (FCRA).

The Applicant recently retained a consumer credit counselor to assist her with resolving her delinquent debt. The credit counselor will help her locate each creditor, lower the interest rates, and establish a payment plan to get the debt paid.

Applicant's financial statement dated May 23, 2008, indicates that after paying her monthly living expenses and current bills, she has approximately \$500.00 in disposable income to use to pay her delinquent debts. (Government Exhibit 7).

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

The Applicant admits each of the allegations set forth in the SOR under this subparagraph. She completed an Electronic Questionnaire for Sensitive Position dated November 14, 2007. Question 28(a) of the application asked the Applicant if in the last seven years has she been 180 days delinquent on any debts. Question 28(b) of the same questionnaire asked the Applicant whether she was currently over 90 days

delinquent on any debts. The Applicant answered, Yes, to both questions and listed two debts, one medical bill in the amount of \$300.00, and a credit card bill for \$212.00. She failed to disclose the other eight delinquent debts set forth in the SOR. (Government Exhibit 4).

The Applicant acknowledges that when she answered questions 28(a) and 28(b), she failed to provide all of the information that she was aware of. She states that she was told by her security manager that she only had to go back five years. She also states that she her credit report was confusing and she was not sure how to interpret it.

I find that the Applicant deliberately failed to answer the questions accurately on the questionnaire because she intentionally wanted to conceal the truth from the government. She knew or should have known to be honest and candid with the Government in filling out the questionnaire. By deliberately providing false information to the Government on this questionnaire, the Applicant violated federal law, Title 18, United States Code, Section 1001.

## **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.

#### Condition that could raise a security concern:

16(a) The deliberate omission, concealment, or falsification of relevant and material 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, 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 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 she has been untruthful on her Electronic Questionnaire for Sensitive Positions (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.

With respect to her finances, the Applicant has in excess of \$10,000.00 in delinquent debt. Presumably, because they were old debts, she thought she did not

have to pay them. WRONG! She has not made even one payment toward resolving any of the delinquent debts in the SOR. To her credit, she has recently hired a credit counselor to help her with her finances. She has only started the financial rehabilitation process and has a long way to go before her debts are resolved. At the present time, she has not presented sufficient evidence to demonstrate a track record of financial responsibility or that she has resolved her financial indebtedness.

Upon review of her financial statement, it appears that she has \$500.00 in disposable income at the end of the month to pay her past due bills. Despite this, she has failed to use any of it to pay her delinquent debts. There is no evidence of financial rehabilitation at this time. 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* apply. None of the mitigating conditions apply. Her financial problems remain current, they are not isolated. The Applicant has not initiated a prompt, good faith effort to repay her overdue creditors or otherwise resolve her debts. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

With respect to Guideline E, the Applicant deliberately concealed material information from the Government on her security clearance application in response to her financial matters. With the particular evidence that I have been provided, there is no reasonable excuse for her failure to answer the questions truthfully. If she is to be trusted with the national secrets, she must be honest with the Government at all times. Consequently, the evidence shows that the Applicant cannot be trusted with the national secrets. Disqualifying Condition *16(a) the deliberate omission, concealment, or falsification of relevant and material 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 are applicable. I find that the Applicant deliberately sought to conceal material information from the Government and that she cannot be trusted with the national secrets.

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.

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 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.

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