



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



In the matter of:)
)
-----) ISCR Case No. 08-04998
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

July 30, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) dated September 4, 2007. (Government Exhibit 1). On December 5, 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.

Applicant answered the SOR in writing on December 29, 2008, and requested a hearing before an Administrative Judge. The case was assigned to another Administrative Judge on April 22, 2009. It was transferred to the undersigned Administrative Judge on May 5, 2009. A notice of hearing was issued on June 2, 2009, scheduling the hearing for June 23, 2009. The Government offered six exhibits, referred to as Government Exhibits 1 through 6, which were received without objection. Applicant offered no exhibits. However, the Applicant called nine witnesses and also testified on her own behalf. The record remained open until close of business on July 23, 2009, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted four Post-Hearing Exhibits, referred to as Applicant's Post-

Hearing Exhibit 1 through 4. The transcript of the hearing (Tr.) was received on June 30, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, her testimony and the exhibits. The Applicant is 50 years old and has a high school diploma and two years of junior college. She is employed by a defense contractor as an Administrative Assistant for Human Resources 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 to each of the allegations set forth in the SOR, namely that she was indebted in the amount of approximately \$55,000.00 for federal and state tax liens. Credit Reports of the Applicant dated September 22, 2007, November 10, 2008, and June 19, 2009, collectively reflect each of the outstanding debts listed in the SOR. (Government Exhibits 4, 5 and 6). The Applicant has been employed for a defense contractor since August 2007.

The Applicant explained that a series of unexpected circumstances caused or contributed to her delinquent back taxes. A divorce in 1987, a job lay off in 1992, unexpected capital gain taxes due to a house sale in the 90's, a failed business venture in the 90's, and a serious car accident in 2006, caused her serious financial setbacks. When she sold her house, she used the profits from the house to purchase a spa business with the hopes of starting a new career. At the time, she was also required to pay her ex-husband child support. With job instability, the state of the economy and its effect on her new business, the business failed and was ultimately repossessed. The Applicant did her best to pay her child support payments, but ultimately fell behind. Unbeknownst to her, she also acquired capital gains tax on the sale of the house that she did not have the money to pay. Both federal and state tax liens were filed against her for back taxes owed.

In May 1999, a state tax lien was filed against her in the amount of \$7,519.00. In March 2004, the state tax authority started garnishing her wages in the amount of approximately \$10,569.00. In February 2000, a Federal Tax lien was filed against the Applicant in the amount of approximately \$35,551.00.

The Applicant explained that although it has taken her a long time to resolve her debts, she has always been willing to pay them. She moved in with her mother to reduce her expenses and free up money to pay her taxes. Her state taxes are now paid in full. She contacted the state and made payment arrangements of \$360.00 monthly that were automatically paid from her bank account. The levy was released at that time, and the debt was paid in full in November 2005. (Tr. pp. 91-92 and Applicant's Answer to the SOR).

She still owes approximately \$32,000.00 in Federal back taxes. (Applicant's Post-Hearing Exhibit 4). In November 2007, she tried to set up a payment plan with the IRS, but they found it unacceptable because the Applicant's earnings were too low. Her attorneys are currently working to negotiate a reduction of the current balance down to an amount that may be paid in a single, lump sum payment, or combination of down-payment and an affordable monthly payment plan which can meet the Applicant's budgetary restrictions. (Applicant's Post-Hearing Exhibit 1). She is currently paying \$50.00 every two weeks to the IRS toward her back taxes. This will continue until she has reaches a formal agreement with the IRS. (Applicant's Post-Hearing Exhibits 3 and 4).

Between her income tax refunds, her garnishments and her voluntary payments, she believes that she has paid between \$15,000.00 and \$20,000.00 toward her back taxes. She testified that her initial federal tax assessment was about \$17,000.00 and her debt would have been paid off, had it not been for penalties and interest.

Several other unexpected events occurred that interrupted her work and negatively effected her income. For a period, the Applicant stopped working to take care of her daughter, who experienced two separate high risk pregnancies. In October 2006, the Applicant was broadsided by an Army transport vehicle and her car was totaled. The matter is currently in litigation. (Applicant's Post-Hearing Exhibit 1). In the interim, she had to borrow money from her mother to purchase another vehicle, and has been slow at making payments toward her federal taxes. The Applicant had expected the litigation to settle by May 2009, and had planned to use the money to pay her taxes.

Nine witnesses testified on behalf of the Applicant. Each of them had favorable things to say about the Applicant's character.

Applicant's supervisor, a retired Staff Sergeant, testified that the Applicant is honest, trustworthy and a person of high integrity. She performs her job in a timely and most efficient manner. (Tr. pp. 77-82).

Both the Applicant's son and daughter testified concerning their mothers character. They consider her to be a patriot, who is honest, kind, trustworthy, responsible and well respected. (Tr. P. 60-72).

Her ex-husband, a retired police officer, testified that the Applicant is more than qualified for her position with the Government, that she is a fine representative, and he has no hesitation recommending her for a position of trust. (Tr. p. 54).

The Applicant's mother testified that the Applicant has lived with her from 2003 through 2007, that the Applicant has at times worked two jobs in order to make ends meet. She also confirmed the car accident in October 2007, which totaled the Applicant's car. (Tr. pp. 66-68).

The Applicant's former business partner and past employer, who sold the spa business to the Applicant and who also repossessed it from the Applicant, testified. The witness states, the Applicant is responsible, reliable and trustworthy, even though she had an unfortunate outcome with her business venture. (Tr. pp. 37-42).

Long time friends, neighbors, and coworkers of the Applicant stated that the Applicant is honest and straightforward. She is also very giving and sincere. She can be relied upon without concern otherwise. (Tr. p. 30-33 and 56-60).

A letter from a friend and coworker of the Applicant attests to her trustworthiness, honesty, professionalism and integrity. (Applicant's Post-Hearing Exhibit 2).

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:

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.

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, extent, 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 extent to which participation is voluntary
- f. The presence or absence of rehabilitation and other permanent 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.

The evidence also shows that circumstances largely beyond the Applicant's control contributed to her financial indebtedness. Until her divorce, the Applicant's credit was in good standing. Her divorce, job lay-off, failed business venture and unexpected capital gains tax assessment, due to the sale of her house, all contributed to her tax problems. Since then, she has worked hard to resolve her indebtedness. She has completely resolved her state tax liability by making regular monthly payments to resolve it. She is making regular monthly payments to the IRS and reduced her federal tax liability. She plans to resolve the debt completely as soon as her lawsuit is settled. She has moved in with her mother to further reduce her overhead. Under the circumstances, the Applicant has done her best to be responsible and has made a good faith effort to resolve her debts. She realizes that she must live within her means and must always pay her bills on time. In the event that she has any future financial problems, her security clearance would immediately be in jeopardy. 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.

Under Guideline F, Disqualifying Conditions *19(a) inability or unwillingness to satisfy debts* and, *19(c) a history of not meeting financial obligations* 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.

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, her favourable character references and 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, or other characteristics indicating that the person may properly safeguard classified information.

There is evidence of financial rehabilitation at this time. The Applicant has initiated a good faith effort to repay her overdue creditors or otherwise resolve her debts. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

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 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: For the Applicant.
- Subpara. 1.a.: For the Applicant.
- Subpara. 1.b.: For the Applicant.
- Subpara. 1.c.: For the Applicant.

DECISION

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

Darlene Lokey Anderson
Administrative Judge