



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-05844  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

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

July 30, 2009

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) dated January 6, 2008. (Government Exhibit 1). On October 24, 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 November 7, 2008, and requested a hearing before an Administrative Judge. The case was originally assigned to another Administrative Judge on April 16, 2009. The matter was transferred to the undersigned Administrative Judge on June 8, 2009. A notice of hearing was issued on June 8, 2009, scheduling the hearing for June 26, 2009. At the hearing, the Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were received without objection. Applicant offered twenty exhibits, referred to Applicant's Exhibits A through T, which were admitted into evidence without objection. She also testified on her own behalf. The record remained open until close of business on July 10, 2009, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted

three Post-Hearing Exhibits, referred to as Post-Hearing Exhibits A through C which were admitted without objection. The transcript of the hearing (Tr.) was received on July 7, 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 35 years old and has a Bachelor's Degree in Business and is half way through her Master's program. She is employed by a defense contractor as a Senior Engineering Project Specialist 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 was married in 1997, at the age of twenty-three. After twelve years in an ill fated marriage that involved her husband's inability to hold a job for any significant length of time, and her efforts to stay in the marriage only for the sake of her children, she and her husband separated last year. The Applicant immediately hired an attorney and got sole physical and legal custody of their three children. In April 2009, the Applicant filed for divorce. (Applicant's Exhibit R). Since their separation, the Applicant has received no financial support of any kind from her husband. (Tr. p. 43). Since November 2007, the Applicant been employed in the defense industry.

The Applicant realized that she and her husband incurred debt during the marriage, but was shocked to learn the extent of their indebtedness when she received the SOR. Most of the credit outlined in the SOR was incurred in her husband's name, and she was a co-signer on the accounts. In addition to the necessities they purchased, her husband also purchased lavish electronic toys for the children that he played with. Her husband had assured her that he was paying the bills, while she was attending college. After separating, her soon to be ex-husband handed her a folder containing numerous letters from collection agencies that the Applicant had not been aware of. Since then, she has been working hard to resolve her delinquent debts.

Although at least half of the debt incurred during the course of her marriage is her husband's financial responsibility, the Applicant has tried to pay most of it off on her own. Only five of the fourteen debts set forth in the SOR remain owing. The following debts have been paid in full. A debt owed to a bank that has been charged off in the amount of \$943.00 has been paid. (Applicant's Exhibit B). A debt owed to a creditor in the amount of \$2,394.00 has been paid. (Applicant's Exhibit C). A debt owed to a

creditor in the amount of \$1,646.00 has been paid. (Applicant's Exhibit D). A debt owed to a creditor in the amount of \$309.00 has been paid. (Applicant's Exhibit E). A debt owed to a creditor in the amount of \$1,667.00 has been paid. (Applicant's Exhibit F). A debt owed to a creditor in the amount of \$1,010.00 has been paid. (Applicant's Exhibit G). A debt owed to a creditor in the amount of \$5,824.00 has been paid. (Applicant's Exhibit H). A debt owed to a creditor in the amount of \$141.00 has been paid. (Applicant's Exhibit I). A debt owed to a medical provider in the amount of \$5,976.00 has been paid. (Applicant's Exhibit J).

The following debts remain outstanding. A debt owed to a bank in the amount of \$3,888.00 remains outstanding. (Applicant's Exhibit A). The Applicant explained that the debt was her husband's and she had hoped that the divorce decree would make him responsible to pay it. However, if it does not, she intends to pay it. A debt owed to a creditor in the amount of \$608.00 remains outstanding. (Applicant's Exhibit K). She explained that she has had difficulty locating the creditor, but plans on paying the debt as soon as she knows who to pay. (Tr. pp. 45 - 46). A debt owed to a creditor in the amount of \$850.00 remains outstanding. (Applicant's Exhibit L). She has also been unable to locate this creditor. A debt owed to a bank in the amount of \$1,200.00 remains outstanding. (Applicant's Exhibit M). Applicant plans to pay all of her debts as soon as possible.

Letters of recommendation from the Applicant's present and past supervisors, and other business associates, including a business development manager, the field security officer, and a program manager attest to her reliability and trustworthiness with the highest moral character. She is said to have always been security conscious and has accessed classified information in an exemplary manner. (Applicant's Exhibit S and Post-Hearing Exhibit A).

Applicant's performance review for 2008 and her mid year review for 2009 reflect that she has met and accomplished each and every one of the expectations of her job description. (Applicant's Post-Hearing Exhibits B and C).

Applicant used her income tax refund to pay her delinquent debts. She is current with all of her monthly expenses and uses whatever is left over at the end of the month toward her delinquent debts. She intends to continue paying her delinquent debts until they are completely resolved. She understands the responsibilities that come with holding a security clearance and protecting the national interests at all times. She understands that she must always live within her means and pay her bills in a timely fashion.

## **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.

Under the particular circumstances of this case, I find that the Applicant has made a good faith effort to resolve her debts. Her financial problems were caused by circumstances largely beyond her control, namely her ill fated marriage that involved her husbands inability to keep a job, and his failure to pay their bills on time. There is also evidence of the fact that at times, they were spending beyond their means. However, upon being made aware of the extent of her indebtedness, she has made tremendous progress in resolving her debts. She has completely paid off nine of the fourteen debts set forth in the SOR. She plans to resolve the remaining debts as soon as possible. She understands the responsibilities that come along with holding a security clearance. She also understands that holding a DoD security clearance is a privilege and that she must continue to demonstrate financial responsibility at all times. She should no longer have any problems paying her bills on time as she understands the importance of living within one's means. In the event that she has any future financial problems, her security clearance will 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.

There is 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. However, *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 applies. The Applicant had 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).

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 above, when viewed under all of the guidelines 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.

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.
- Subpara. 1.d.: For the Applicant.
- Subpara. 1.e.: For the Applicant.
- Subpara. 1.f.: For the Applicant.
- Subpara. 1.g.: For the Applicant.
- Subpara. 1.h.: For the Applicant.
- Subpara. 1.i.: For the Applicant.
- Subpara. 1.j.: For the Applicant.
- Subpara. 1.k.: For the Applicant.
- Subpara. 1.l.: For the Applicant.
- Subpara. 1.m.: For the Applicant.
- Subpara. 1.n.: 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