



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-07453  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

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

February 2, 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) on January 30, 2008. On September 4, 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 16, 2008. A notice of hearing was issued on October 30, 2008, scheduling the hearing for December 10, 2008. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were received without objection. Applicant offered nine exhibits, referred to as Applicant's Exhibits A through I and testified on her own behalf. The record remained open until close of business on January 31, 2009, to allow the Applicant to submit additional documentation. Applicant submitted three Post-Hearing Exhibits, referred to as Post-Hearing Exhibits A, B and C. The transcript of the hearing (Tr.) was received on December 19, 2008. Based upon a

review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **FINDINGS OF FACT**

The Applicant is 43 years old and has a Bachelor's Degree in Business Administration. She is employed by a defense contractor as an Office Administrator 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 is indebted to at least eleven separate creditors totaling approximately \$21,000.00. (See Government Exhibits 2, 3, 4 and 5). Applicant explained that she is currently going through a divorce and has three children in her custody. She and her husband have been separated for four years, and he provides no child support. Each of the debts listed in the SOR, except one, was acquired by her and/or her husband during the course of their marriage. She is uncertain how the court will divide the joint debts, but assumes that she will be responsible for at least half of them. Some of the debts listed in the SOR are for credit cards used for household expenses, others are medical bills for her or her children. Her husband currently pays half of the house payment and nothing more toward the household expenses.

Applicant's child custody and child support hearing was scheduled in superior court on November 5, 2008. (Applicant's Exhibit E). Applicant is seeking support in the amount of approximately \$1,100.00 per month. If awarded, the child support award will be used to assist with the children while her other income will go towards paying off her delinquent debts. Applicant's Post-Hearing Exhibit B indicates that her child custody and child support hearing was continued until February 24, 2008.

Applicant began working for her current employer in January 2008. She earns \$18.25 per hour and brings home approximately \$623.00 per week. (Applicant's Exhibits F and G). This money she uses to pay her half of the mortgage and to support her children. One of her children is in Catholic school, and the Applicant's mother is assisting her with tuition. (Applicant's Exhibit I).

Applicant's Post Hearing Exhibit C indicates that on January 20, 2009, the Applicant retained a credit counseling service to repair and remove derogatory credit entries on her credit report and to assist her in resolving her outstanding debt.

The Applicant's Performance Evaluation for the period from January 2008 and December 2008 is favorable. (Applicant's Post-Hearing Exhibit A).

A letter of recommendation from the Applicant's Manager dated December 8, 2008, and from her Supervisor dated December 4, 2008, attests to her honesty, integrity, good character and judgment and her persistent pursuit of excellence. She is known as a hard worker and a leader, who demonstrates excellent communication skills and the willingness to face challenges head on with efficiency. She is highly recommended for a position of trust, as she is considered to be a valuable asset to the company. (Applicant's Exhibit B).

### **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;

#### **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;

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). 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 not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case. Unfortunately, the Applicant is excessively indebted as a result of a divorce and an irresponsible husband. She is supporting herself and her three children by herself. Under the circumstances, she has been unable to pay her delinquent debts. She recently contacted a consumer credit counselor to assist her in cleaning up her credit report and resolving her past due indebtedness. She understands the importance of paying her bills on time and living within her means. However, until her financial situation is addressed, there is no evidence of financial rehabilitation. Thus, at this time she has not 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 obligations*; and 19.(e) *consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ration, 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* also applies. Even so, she does not meet the eligibility requirements for access to classified information. She remains excessively indebted. Accordingly, I find against 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. The facts of this case are unusual and unfortunate. However, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of poor judgement, untrustworthiness, unreliability, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information. The Applicant’s situation prevents her from meeting the eligibility requirements. She has not paid any of her outstanding debts. This Applicant may reapply for a security clearance in the future when she is eligible and when she has addressed her financial indebtedness. At the present time, however, applying the guidelines of the Directive, she is not security clearance worthy.

I have considered all of the evidence presented, however, it does not mitigate the negative effects of her financial indebtedness and the effects that it can have on her ability to 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 Paragraph 1 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:	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.

## **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge