



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



In the matter of:)
)
-----) ISCR Case No. 08-07817
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Department Counsel
For Applicant: *Pro Se*

March 30, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) dated December 18, 2007. On October 10, 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 October 28, 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 December 9, 2008. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on January 6, 2009, and she submitted a reply within the required time frame. The case was assigned to another Administrative Judge on February 18, 2009, and was assigned to this Administrative Judge for resolution on March 16, 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 46 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 SOR alleges fourteen delinquent debts totaling approximately \$15,319.00. Applicant admits all of the allegations set forth in the SOR, except allegations 1(c), 1(d), and 1(e). Credit reports of the Applicant dated December 2, 2008, and December 17, 2007, indicate that she remains indebted to each of the creditors and that either they were in collection status or were charged off. (Government Exhibits 8 and 9).

On October 4, 1999, the Applicant filed for Chapter 7 Bankruptcy.¹ At the time, her assets totaled \$8,000.00 while her liabilities totaled \$7,120.00. On January 19, 2000, her unsecured debts were discharged. (Government Exhibit 6).

Between 2002 and 2008, the Applicant opened numerous credit card accounts, automobile loans, utility, medical bills, convenience and other miscellaneous accounts that she could not afford to pay. She attributes her financial problems to several different events. She lost her job and was unemployed from May 2002 to November 2002. Her husband was not working at times, and when he was, his work hours were reduced. Her husband's habit of moving in and out of the house caused problems and he eventually deserted the family in 2004. She also claims that her son was in a car accident and her insurance would not pay the medical bills. Applicant submitted no documentary evidence to support these assertions. (Government Exhibit 5).

In Applicant's response to the FORM, she states that she is currently working on reducing her delinquent debt. She plans on paying each of her delinquent debts one by one, however she does not want to overextend herself or make arrangements with creditors to pay amounts that she cannot afford. Presently, she states that she has paid

¹ The SOR erroneously alleges that the filing date of the Chapter 7 Bankruptcy was August 16, 1999. Government Exhibit 6, a copy of the Bankruptcy petition, indicates that the actual filing date was October 4, 1999. I have amended the SOR to comport with the evidence.

off two of her debts and is working on paying another. A debt owed to NCO Financial/Florida Power in the amount of \$265.00 has been paid, and a debt to Credit Management (CMI) Bright House in the amount of \$349.00 has also been settled. She also claims that a judgment entered against her in September 2004, in the amount of \$3,393.00 has been satisfied. However, she has provided no proof or payment or any other documentation to support her assertions.

Even assuming that she has paid three of the debts, eleven others remain outstanding. She remains indebted in excess of \$8,000.00. A debt owed to NCO Financial in the amount of \$265.00 remains outstanding. A debt owed to HSBC in the amount of \$265.00 remains outstanding. A debt owed for a medical account in the amount of \$136.00 remains outstanding. A debt owed for a medical account in the amount of \$451.00 remains outstanding. A debt owed for a medical account in the amount of \$367.00 remains outstanding. A debt owed to Capital One in the amount of \$2,151.00 remains outstanding. A debt owed to Capital One in the amount of \$2,186.00 remains outstanding. A debt owed to Midland in the amount of \$3,439.00 remains outstanding. A debt owed to Portfolio in the amount of \$1,353.00 remains outstanding. A debt owed to AFNI Bloom in the amount of \$555.00 remains outstanding. A debt owed to First Premier in the amount of \$409.00 remains outstanding. (Government Exhibits 8 and 9).

Applicant's personal financial statement dated September 5, 2008, indicates that after she pays her regular monthly expenses, and her son's college rent of \$500.00, she has \$133.76 left at the end of the month. This does not allow her to pay much toward her delinquent debts. At the bottom of the statement she remarks, "\$500.00 from daughter and \$300 bi-weekly from husband", but there is no documentary evidence to substantiate this additional income or what she has planned to do with it if she does receive it.

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(b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;

19(c) a history of not meeting financial obligations.

Conditions 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 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 Applicant's seven month period of unemployment, her husband's reduced work hours, and his absence from the family household, obviously contributed to her financial delinquencies. However, the record also shows that in 1999, she filed Chapter 7 Bankruptcy and discharged all of her delinquent debts. She then went out, opened up new credit accounts, and again fell delinquent. The Applicant has not shown that the conditions that caused her financial problems were largely beyond her control. She has, however, shown a clear pattern of financial irresponsibility. Although she states that she has recently paid off three of her debts, she remains indebted in the amount of at least \$8,000.00.

She states that she plans to pay her debts but does not present a budget or payment plan to explain how her delinquent debts will be paid. Furthermore, it is

unclear from the record whether she understands the importance of financial management. A promise to take remedial measures in the future is not evidence of reform and rehabilitation. There is no evidence in the record that she has eliminated her use of credit cards. There is no evidence in the record to demonstrate that she can make her regular monthly payments in addition to making payments on her delinquent debts. 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.

With respect to her finances, assuming she has paid three of her delinquent debts, she remains indebted to at least eleven separate creditors totaling approximately \$8,000.00. She has just started the financial rehabilitation process and has a long way to go before her delinquent 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 little disposable income at the end of the month to pay her past due bills. There is little evidence of financial rehabilitation at this time. Under Guideline F (Financial Considerations), Disqualifying Conditions *19(a) inability or unwillingness to satisfy debts; 19(b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; and 19(c) a history of not meeting financial obligations* apply. None of the mitigating conditions apply. Her financial problems remain current and 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).

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 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: Against the Applicant.

- Subpara. 1.a.: For 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.: For 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.: For 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