



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-08395
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, 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 March 28, 2008. On October 16, 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 12, 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 26, 2009. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on February 4, 2009, and she submitted a reply dated March 1, 2009. The case was assigned to the undersigned 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 36 years old and divorced. 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 guideline. Her two delinquent debts totaled approximately \$39,600.00. (See Government Exhibits 6 and 7). She is indebted to Sears/Citi for an account that was charged off in the amount of approximately \$14,848.00. This debt remains outstanding. She was also indebted to Unifund/Citibank Universal/Pinnacle for an account placed into collection in the amount of approximately \$24,751.00. This debt has now been resolved. Applicant's response to the FORM indicates that she recently negotiated with Unifund/Citibank Universal/Pinnacle and settled the debt for \$9,600.00. (See copy of check submitted for payment in Applicant's Reply to the FORM). Applicant states that she is currently setting up a plan to pay her only remaining delinquent debt owed to Sears/Citi in the amount of \$14,848.00.

In Applicant's answer to the SOR, (Government Exhibit 4), she attributes her excessive financial indebtedness to a car accident in late 2004 that totaled her car and caused her to have to purchase and take on a new car loan. In 2005, she incurred moving expenses and higher rent. At the same time, she had student loan obligations, and interest rates on her credit cards increased. Her minimum payments on her credit cards doubled from 2% to 4% in 2006, which caused her to lose control of her finances. At that point, she decided that she could only afford to pay for the essentials which included her utilities rent and food, car loan and student loan payments. Her credit card bills had to wait, and so she stopped making payments on four credit card accounts.

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.

Condition that could mitigate security concerns:

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 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.

Admittedly, the Applicant’s car accident, her move, her student loans and increased credit card interest rates contributed to her financial problems. In addition, when she incurred the debt, she was much younger, immature and not as responsible as she is now. Recently, she has settled one of her two delinquent debts. Under the particular circumstances of this case, I find that the Applicant has done her best, given the excessive nature of the two debts, and has made a good faith effort to resolve them. 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.

With respect to her finances, the Applicant indicates that she is setting up a payment plan to pay the remaining debt. Although she has just started the process of addressing her last delinquent debt, and has a long way to go before it is resolved, she has shown good judgment under the circumstances. Her plan is to immediately start making payments to resolve her remaining debt or to pay it off in full. If she does not, her security clearance will be in immediate jeopardy.

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 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. 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, Mitigating Condition *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).

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.

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