



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-08662
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Department Counsel
For Applicant: *Pro Se*

May 27, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on May 19, 2008. (Government Exhibit 1). On December 12, 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 February 24, 2009, and requested a hearing before an Administrative Judge. The case was originally assigned to another Administrative Judge on March 23, 2009. The case was reassigned to the undersigned Administrative Judge on April 6, 2009. A notice of hearing was issued on April 7, 2009, scheduling the hearing for April 28, 2009. The Government offered six exhibits, referred to as Government Exhibits 1 through 6, which were received without objection. Applicant offered nine exhibits, referred to as Applicant's Exhibits A through I. She also testified on her own behalf. The record remained open until close of business on May 19, 2009 to allow the Applicant to submit additional documentation. Applicant submitted eight Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through

8, which were admitted into evidence without objection. The transcript of the hearing (Tr.) was received on May 6, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

The Government's motion to amend allegations 1(a), 1(b), 1(c) and 1(d) to delete and remove all extraneous comments following, "As of December 2, 2008, this debt has not been paid," was granted. As was the Government's motion to amend allegation 1(e), to delete and remove all extraneous comments following, "As of May 28, 2008, this debt had not been paid." Applicant had no objection to said amendments.

FINDINGS OF FACT

The Applicant is 23 years old and has a high school diploma and two years of college. She is employed by a defense contractor as a Administrative Assistant to the Government Security Operations Manager 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 admits each of the allegations set forth in the SOR under this guideline that include indebtedness to five separate creditors totaling approximately \$15,000.00. There debts are reflected in the Applicant's Credit Reports dated May 28, 2008; December 2, 2008; and March 9, 2009. (See Government Exhibits 3, 4 and 5).

Applicant testified that at the young age of sixteen, while still in high school, she got married and became pregnant with her first child. Her husband, who was two years older, joined the military to support them. Two years later, the Applicant had her second child. In 2004, her husband got out of the military. That same year, she and her husband separated and she had to find employment for the first time in her life. She had several jobs before landing her current employment. She began her current employment on April 14, 2008. She receives no child support, alimony or any other financial assistance from her husband who is currently not working. She and her children recently moved back with her parents in order to save money, pay her bills and finish school.

As a direct result of her marital separation, and her husband's failure to provide any financial assistance to her and her children, she became indebted to several creditors. She is indebted to a bank for a credit card in the amount of \$605.00. She testified that her husband opened the account and put her down as an alternate. She

never signed the application to apply for the credit card, nor did she ever use the account for anything. It was exclusively his. Applicant testified that she is going to contact the credit agencies to dispute the debt and have it removed from her credit report. Applicant's most recent credit report reflects that the debt has been removed. (Applicant's Post-Hearing Exhibit 3).

She is indebted to the Department of Education for student loans in the amount of \$842.00, \$1,326.00 and \$3,425.00 that she incurred while he was in the military. Since November 2008, the Applicant has been paying \$75.00 per month towards all three student loans and the creditor finds this payment acceptable at this time. (Applicant's Post-Hearing Exhibit 3 and Applicant's Exhibits A, B, C, D, E and F).

She is indebted to a car company in the amount of \$8,852.00 for a vehicle that was repossessed. She testified that when she and her husband separated, he took the car and gave it to his parents with the understanding that they were going to make the payments. They did not make the payments. In November 2008, the Applicant contacted the creditor about the debt. They told her that they would contact her husband. The Applicant thought that the creditor had worked something out with her husband because she was no longer receiving collection calls for payment. (Tr p. 70). At some later date she again contacted the creditor and was told that they would send something to her by mail and she could start making payments. She recently set up a payment plan of \$100.00 a month that she will pay until the debt is paid in full. (Applicant's Post-Hearing Exhibit 4).

The Applicant currently earns about \$2,400 a month. She pays no rent or child care fees because her parents are helping her with that. After paying her monthly bills, she has between \$400.00 and \$500.00 left to use toward her delinquent debts. Applicant's Post Hearing Exhibit indicates that starting June 2009, Applicant's father was laid off from his job and Applicant will be paying at least \$200.00 a month to help with the rent. (Applicant's Post-Hearing Exhibit 2).

Applicant received a Certificate of Completion for successful completion at a Conference for Administrative Professionals. (Applicant's Exhibit H).

A letter of recommendation dated July 16, 2008, from the site Director of Security and Emergency Services indicates that he was impressed with the Applicant's attention to detail resulting in a first class affair held for a company employee. This indicates that the Applicant is competent on the job. (Applicant's Exhibit I).

Letters of commendation from the Applicant's previous manager, previous lead, and past and present co-workers indicate that the Applicant demonstrates superior work ethics and exceeds expectation in her job position. She has a positive attitude, is highly dependable, hardworking, punctual and is a team player. (Applicant's Post-Hearing Exhibits 5, 6, 7 and 8).

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;

19.(e) consistent spending beyond ones means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

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.(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
- 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, 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 introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case. Applicant's separated from her husband, and the loss of his income and financial support was the primary cause for her financial problems. Seven years have passed since she married and became pregnant with her first child. Over that time, she has matured significantly. She has reduced her expenses by recently moving back to her parent's home with her children in order to save money that she can use to pay her delinquent debts. She has contacted each of her creditors and is either setting up payment plans to pay them, or is currently paying the debt on a monthly basis. She plans to continue to pay them until they are resolved. She is planning on going to college at night to further enhance her career. She understands that she must always be responsible in everything she does and every decision she makes. She also understands that she must always live within her means and pay her bills on time. Under the particular circumstances of this case, she has made a good faith effort to resolve his indebtedness, and there is evidence of financial rehabilitation. The Applicant has 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 ratio, 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*; 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. 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 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, and/or other characteristics indicating that the person may properly safeguard classified information.

I have considered all of the evidence presented and it sufficiently mitigates the adverse information brought against her. 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 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:	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.

DECISION

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

Darlene Lokey Anderson
Administrative Judge