



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



In the matter of:	)	
-----	)	
SSN: -----	)	ISCR Case No. 08-08991
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Department Counsel  
For Applicant: *Pro se*

August 20, 2010

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) dated February 20, 2008. (Government Exhibit 1.) On June 25, 2009, 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 on July 20, 2009, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to another Administrative Judge on January 11, 2010, and a hearing was held on March 18, 2010. At that hearing the Government presented seven exhibits referred to as Government Exhibits 1 through 7, which were admitted into evidence without objection. The Applicant requested that the hearing be continued as she was not prepared to present

her case. The matter was continued, and re-assigned to the undersigned Administrative Judge on March 26, 2010. A notice of hearing was issued on April 2, 2010, scheduling the hearing for May 14, 2010. At the hearing, the Government presented one additional exhibit referred to as Government Exhibit 8, which was admitted without objection. The Applicant presented nine exhibits, referred to as Applicant's Exhibits A through I, which were admitted without objection. The Applicant also testified on her own behalf. The record remained open until close of business on May 24, 2010, to allow the Applicant to submit additional documentation. The Applicant submitted six Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through 6. The official transcript (Tr.) was received on May 20, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **PROCEDURAL MATTERS**

The Government, through Department Counsel, filed a Notice of Amendment to the Statement of Reasons on a date uncertain, to include five additional allegations, namely subparagraphs 1(o) through 1(s). The Applicant had no objection to said amendment. Allegations 1(o) through 1(s) include a debt owed to a creditor for a delinquent credit card in the amount of \$1,151.00; a debt owed to a creditor for a delinquent credit card in the amount of \$1,341.00; a debt owed to a creditor in the amount of \$5,522.00; a debt owed to a creditor in the amount of the amount of \$13,977.00; and a debt owed to a creditor for a mortgage on a house in the amount of \$392,000. They are hereby incorporated into the original Statement of Reasons.

### **FINDINGS OF FACT**

The following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 47 years old, completed the twelfth grade, but did not graduate. She is employed by a defense contractor as a Computer Operator 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 delinquent debts set forth in the SOR under this guideline that include unpaid debts totaling in excess of \$50,000. Although the debts set forth in allegations 1(o), 1(p), and 1(q) are not familiar to her, she acknowledges that they are reflected in her credit report. Credit Reports of the Applicant dated March 18, 2008, June 3, 2009, December 3, 2009, March 16, 2010, and May 4, 2010, collectively reflect each of the delinquent debts set forth in the SOR. (Government Exhibits 4, 5, 6, 7 and 8).

After finishing high school, the Applicant got married and had four children. Although she worked off and on, she was a stay at home mother most of the time. (Tr. p. 27). In 1992, her husband, who worked in construction, had little or no work. As a result, they fell behind on their bills, had to file for Chapter 7 Bankruptcy, and discharged approximately \$12,000. (Government Exhibit 2). As the economy improved, in 1994-95, she and her husband built a tile contracting business together that allowed her to work out of her home and still take care of the children. He did the tile work, while she did all of the paperwork, including setting up the business, incorporating it, payroll, insurance, employee matters, etc. Business was good and they were able to buy a house. At that time, they had excellent credit and twenty employees. (Tr. p. 30).

As time passed, her husband's spending habits became frivolous and irresponsible, even though the economy was on a downturn and their business was suffering. This caused serious marital conflict, negatively effected their credit, and eventually led to their separation. In 2005, the Applicant and her husband separated. He quit his job, and stopped making the house payment. (Tr. p. 32). By this time they had refinanced the house they had originally bought for \$140,000 up to \$500,000. The house was eventually foreclosed upon. To try and make ends meet and to support her children, the Applicant started working as a waitress, and in 2007, she worked three jobs at one time to support her family.

In 2007, she was offered a temporary position with her current employer that later became permanent. When she was hired, and was told that she had to apply for a security clearance, she told her supervisor that she had financial indebtedness that had not been resolved. (Tr. p. 31). She planned on filing bankruptcy but had to save the money to do so. It took two years before she had the money to file for bankruptcy. (Tr. p. 31). After twenty-two years of marriage, in February of this year, the Applicant filed for divorce. She was unable to file earlier due to financial hardship.

The Applicant became indebted to the following creditors: a debt owed to a creditor for a delinquent credit card in the amount of \$3,901.00; a debt owed to a bank in the amount of \$9,172.00; a debt owed to a bank in the amount of \$7,073.00; a debt owed to a creditor in the amount of \$5,116.00; a debt owed to a creditor in the amount

of \$962.00; a debt owed to a creditor in the amount of \$674.00; and a debt owed to a creditor in the amount of \$1,765.00.

She also had a debt owed to a creditor in the amount of \$7,544.00; a debt owed to a creditor in the amount of \$385.00; a debt owed to a creditor in the amount of \$6,084.00, a debt owed to a creditor in the amount of \$581.00; a debt owed to a creditor in the amount of \$4,701.00; a debt owed to a creditor in the amount of \$1,574.00; and a debt owed to a creditor in the amount of \$1,238.090.

Finally, Applicant had a debt owed to a creditor for a delinquent credit card in the amount of \$1,151.00; a debt owed to a creditor for a delinquent credit card in the amount of \$1,341.00; a debt owed to a creditor in the amount of \$5,522.00; a debt owed to a creditor in the amount of the amount of \$13,977.00; and a debt owed to a creditor for a mortgage on a house in the amount of \$392,000.

Although half of the debt alleged in the SOR is her husband's responsibility, he has failed to pay it. In an effort to resolve her indebtedness, on June 15, 2009, the Applicant filed for Chapter 7 Bankruptcy to discharge all of her delinquent debts that include each of the debts set forth in the SOR. (Applicant's Exhibits E and F and Post-Hearing Exhibits 4, 5 and 6). Although some of the account numbers of her Schedule F do not match those reflected on her credit reports, her attorney advises her that she does not owe any of the debt, and that in order to have them removed she must write the three separate credit agencies and inform them that they are incorrectly reporting information on her credit report and send a copy of her schedule F showing that they were listed in her bankruptcy and that they have been discharged. (Applicant's Post-Hearing Exhibit 6).

She currently earns about \$30,000 annually. (Tr. p. 36). She is moving out of her apartment and in with her mother to further reduce her expenses. She is making every effort to live within her means and is accumulating no new debt. (Applicant's Exhibit D).

Letters of recommendation from her supervisor, the company security manager, professional associates and friends of the Applicant, who know her in professional and personal capacities, attest to her competency, knowledge, trustworthiness, and her hardworking, helpful and professional nature. She is highly organized, has excellent communication skills and a great rapport with coworkers. She is highly recommended for a position of trust. (Applicant's Exhibit H).

## 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 condition 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 circumstance;

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 18-19, 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 behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- 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 predicated 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.

Circumstances largely beyond the Applicant's control, mainly the poor economy, resulted in the loss of her business, the loss of her marriage that is directly related to her financial hardship, and her poor credit standing. For the past three years, however, she had been working hard to climb out of the hole she fell into. She has worked three jobs to support herself and her children. She has filed for Chapter 7 bankruptcy to discharge her delinquent debt, she dissolved the business, paid back the overdue taxes related to the business, filed for divorce, and taken full responsibility for her minor child. Under the circumstances she has been prudent and exercised good judgment in an effort to resolve her debts. She is moving out of her apartment and in with her mother to further reduce her expenses. She has done everything humanly possible to repair the past financial damage. She is living within her means and currently demonstrates financial rehabilitation. She has presented sufficient evidence to demonstrate a track record of financial responsibility and has resolved her financial indebtedness.

There is sufficient 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 Conditions 20(b) *the condition 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 circumstance* and, 20(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* also apply. The Applicant has indeed made 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 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.

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.
- Subpara. 1.o.: For the Applicant.
- Subpara. 1.p.: For the Applicant.
- Subpara. 1.q.: For the Applicant.
- Subpara. 1.r.: For the Applicant.
- Subpara. 1.s.: 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