



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-09007
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

April 7, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) dated August 1, 2007. (Government Exhibit 1.) On June 5, 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 2, 2009, and she requested a hearing before a DOHA Administrative Judge. This case was originally assigned to another Administrative Judge on August 6, 2009. The matter was reassigned to the undersigned on August 24, 2009. A notice of hearing was issued on September 11, 2009, scheduling the hearing for October 6, 2009. At the hearing the Government moved to amend paragraph 2, allegation (b), to reflect Question 22(b) of the Public

Trust Position Application dated November 14, 2006, rather than Question 20. Applicant had no objection. (Government Exhibit 3 and Tr. p. 31.) The Government presented twelve exhibits, referred to Government Exhibits 1 to 12, which were admitted without objection. The Applicant presented seven exhibits, referred to as Applicant's Exhibits A through G, which were admitted without objection. The Applicant also testified on her own behalf. The record remained open until October 13, 2009, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted eight Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through 8, which were admitted without objection. The official transcript (Tr.) was received on October 13, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

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 34 years old, and has a high school diploma and one year of college. She is employed by a defense contractor as an Administrative Assistant 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 fourteen delinquent debts set forth in the SOR under this guideline that total approximately \$414,413.00. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated August 31, 2001; September 26, 2008; April 29, 2009; July 30, 2009; and September 28, 2009, collectively reflect each of the delinquent debts set forth in the SOR. (Government Exhibits 5, 6, 7, 8 and 12.) Applicant attributes her financial difficulties to a separation from her first husband in 1998, their divorce in 2004, absorbing all of the debt from the marriage herself, being a single mother with two children from 1998 to 2004, living on one income, and being responsible for taking care of her mother. In 2004, she married her current husband and there are two children from this marriage. All of the debt set forth in the SOR, except the foreclosure and some medical bills, was incurred during and after her first marriage and before she met her current husband. (Tr. p. 91.)

Each of the delinquent debts set forth in the SOR have now been resolved. Delinquent debts owed to a creditor in the amount of \$191.00; \$1,000.00; \$87.00;

\$1,079.00; \$1,697.00; \$180.00; and \$93.00 have been paid. (SOR allegations 1(a) through 1(g). Applicant testified that these debts were for medical bills incurred by her children. She states that she had been making payments since 2005, and thought her husband had paid off the debts in full. (Applicant's Exhibits D and E.) She consolidated the debts and had been making payments of \$100.00 each month since July 2009. (Applicant's Exhibit G.) Following the hearing, she borrowed from her retirement account and settled the debts in full for \$3,800.00. (Applicant's Post-Hearing Exhibit 8.)

A delinquent debt owed to a creditor in the amount of \$57.00 has been paid. (Applicant's Exhibit B.) (SOR 1(h).) A debt owed to a creditor in the amount of \$51.00 for a bounced check has been paid. (Applicant's Exhibit C.) (SOR 1(k).)

Debts owed to creditors in the amount of \$328,000.00 and \$80,640.00 have been resolved. (SOR 1(i) and 1(j).) Applicant explained that these debts were for the first and second loan on her house. As a result of a bad adjustable loan, Applicant and her husband could no longer afford the payments. After unsuccessful efforts to refinance and/or sell the house, it was ultimately foreclosed upon in July or August 2007 and resold. Applicant was told that she was no longer responsible for the debt and has not been contacted by the bank. (Tr. p. 57.)

A debt owed to a creditor in the amount of \$2,045.00 was settled in full for \$613.52. (Applicant's Post-Hearing Exhibit 7.) (SOR 1(l).) A debt owed to a creditor in the amount of \$278.00 has been paid. (Applicant's Post-Hearing Exhibits 5 and 6). (SOR 1(m).) A debt owed to a creditor in the amount of \$1,015.00 was settled in full for \$457.00. (Applicant's Exhibit 4). (SOR 1(n).)

Applicant stated that she has also taken her daughter out of private school, which saves \$336.00 monthly. After paying their monthly expenses, she and her husband have sufficient discretionary money to pay their current debts.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance because he intentionally falsified material aspects of her personal background during the employment process.

The Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) dated August 1, 2007. Question 28(a) of the application asked the Applicant if in the last seven years she has been over 180 days delinquent on any debts. The Applicant answered, "NO". (Government Exhibits 1 and 2.) This was a false answer. Applicant failed to list any of the debts set forth in the SOR. The Applicant explained that she must have misunderstood the question, and she may have rushed through the application. She also thought many of the debts were paid off and older than seven years. She was given a month to complete the application. (Tr. p. 96.)

The Applicant also completed a Public Trust Positions Application dated November 14, 2006, wherein the Applicant was asked if she is now over 180 days delinquent on any loan or financial obligation. The Applicant answered, "NO". This was a false answer. (Government Exhibit 3.) The Applicant failed to list any of the debts set forth in the SOR. The Applicant explained that she must have misunderstood the question. She states that she had no assistance in filling out the questions, and believes that she should have asked for help.

Two letters of recommendation from the Applicant's current manager, and a co-worker, indicate that she is professional, responsible, well organized, accountable, and committed to her job. She is considered highly trustworthy. (Applicant's Post-Hearing Exhibits 1 and 2.)

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.

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Condition that could raise a security concern:

16(a) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Conditions that could mitigate security concerns:

None.

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 and dishonesty 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), and untruthful on her Questionnaire for Investigations Processing (Guideline E). 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.

With respect to her finances, most of the Applicant’s delinquent debt was incurred as a result of her separation and divorce and the consequences of being a

single mother with children. Since then, she has resolved most, if not all, of her delinquent debt. Other than her mortgage, she has paid off all of the debts set forth in the SOR. When she could no longer afford her home, she did everything humanly possible to save it from foreclosure. Despite this, her house was foreclosed upon and resold. She has not received anything from the bank or from the tax authorities, and was told that the matter was resolved. She 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).

On the other hand, with respect to Guideline E, the Applicant deliberately concealed material information from the Government on two security clearance applications in response to her history of delinquent indebtedness. She claims that she misunderstood the questions, however, they are not complicated or confusing, nor would a reasonable person under similar circumstance believe so. She was given a month to complete the application. With the particular evidence that I have been provided, there is no reasonable excuse for her failure to answer the questions truthfully. She was obviously trying to conceal her delinquent indebtedness and was not careful or serious when filling out the questionnaire. Consequently, that attitude reflects unreliability. Thus, the evidence shows that the Applicant cannot be trusted with the national secrets. Disqualifying Condition 16(a) *the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* applies. None of the mitigating conditions are applicable.

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 2 of the Government's Statement of Reasons. As discussed above, Paragraph 1 is found for the Applicant.

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.

Paragraph 2: Against the Applicant.

- Subpara. 2.a.: Against the Applicant.
- Subpara. 2.b.: Against 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