

referred to as Applicant's Post-Hearing Exhibits, 1 through 9. The transcript of the hearing (Tr.) was received on May 7, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, his testimony and the exhibits. The Applicant is 25 years old and has a high school diploma and three semesters of college. She is employed by a defense contractor as a Network Device Engineer 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 to each of the allegations set forth in the SOR under this guideline. She has twelve separate delinquent accounts totaling approximately \$80,000.00. Credit Reports of the Applicant dated June 18, 2008, November 13, 2008 and March 16, 2009, collectively reflect each of the outstanding debts listed in the SOR. The Applicant has been employed for a defense contractor since May 2008. (Government Exhibits 3, 4 and 5).

In 2005, the Applicant had good credit and a good job. At that time, she had a handful of credit cards and decent credit. Her parents sold their house, the house the Applicant grew up in, to the Applicant, and she was able to financially afford it. Her boyfriend at the time who later became her husband helped her make the payments. Together they brought home about \$6,000.00 a month and they spent it. They did not realize how expensive it was to own a house and started relying on credit cards.

In about May 2006, the Applicant and her husband separated. (Applicant's Exhibit J). For a couple of months he helped her with the household bills and then in August 2006 he stopped. This is when her financial problems began. The Applicant was instantly responsible for the financial support for her and her three children. In order to make ends meet, she used credit cards. She also bought frivolous things such as dinners and movies that were not necessary. She fell into deep indebtedness. Although she was contacted by creditors for payment, she did not open her mail and was irresponsible.

In April 2008, the Applicant started attending college in order to improve her earning ability but was forced to quit when her child's father refused to allow their child

to live with her mother. To avoid conflict and the possibility of losing her child, the Applicant quit school and moved back near the location where the child's father lives.

When the Applicant realized that her job was in jeopardy because of her delinquent debts, she contacted her creditors and tried to set up payment plans, settlement agreements, or started paying the debt. The Applicant realized that it would take her a long time to resolve her debts but she had been previously advised by her tax preparer and her father that it would have a negative impact on her job if she were to file bankruptcy. So, she started trying to resolve her debts on her own.

After paying her regular monthly expenses, she testified that she had \$400.00 that she can use to pay her delinquent debts. Of the delinquent debt listed in the SOR, \$51,000.00 is a second mortgage on her house that was foreclosed upon; \$21,688.00 is credit card debt; and \$7,095.00 is for student loans. These are discussed in detail below:

1(a). A credit card debt in the amount of \$1,642.00, is being paid in monthly installments of \$100.00 a month. (Applicant's Exhibit B).

1(b) and 1(g). A debt owed to a bank in the amount of \$51,000.00 is the second mortgage on her house. A debt to a home loan service in the amount of \$207,921.00 was for the first mortgage on her home. Applicant explained that she stopped paying her mortgage in order to keep up with her credit card debt because she was using the credit cards to live on. She thought that she could eventually catch up on the mortgage payment, but she was not able to. She put her house up for sale in order to pay off the loan, but it did not sell. She even made an offer to short sale the house, but the bank rejected it. She tried to get a loan modification but was unable to get one. In February 2007, the Applicant defaulted on the house loan and it was foreclosed upon. Applicant indicates that the house has been sold and there are people living in it. (Applicant's Exhibit C).

1(c). A credit card debt owed to a bank in the amount of \$4,500.00 is being paid in monthly installments of \$50.00. Applicant began the payments in about October 2008, and has been consistently paying them since then. (Applicant's Exhibit D).

1(d). A credit card debt owed to a bank in the amount of \$5,528.00 remains outstanding. (Applicant's Exhibit E).

1(e). and 1(f). Two credit card debts owed to a bank in the amount of \$6,337.00 and \$2,782.00 have a payment plan set up in the amount of \$100.00 a month for both accounts. The Applicant's first payment is scheduled for May 1, 2009. (Applicant's Exhibit F).

1(h). A debt owed to a University in the amount of \$850.00 has been paid in full. (Tr. p. 90, Applicant's Exhibit G and Post-Hearing Exhibit 6).

1(i). and 1(j). Two student loans owed to a bank in the amounts of \$2,614.00 and \$4,481.00 have been consolidated. The Applicant has set up a payment plan and is paying \$81.98 a month toward the debt. (Applicant's Exhibit H).

1(l). A debt owed to a creditor in the amount of \$4,600.00 was paid in full with the Applicant's income tax refund. (Applicant's Exhibit I).

Recently, the Applicant sought out financial counseling. (Applicant's Post-Hearing Exhibit 3). She discussed her financial problems with her supervisor, coworkers, friends and security officer. She decided that bankruptcy was her best option under the circumstances. A letter from her bankruptcy attorney indicates that on May 20, 2009, he filed for Chapter 7 bankruptcy on her behalf. (Applicant's Post-Hearing Exhibit 5). Once her debts are discharged, she will be able to get her finances back on track. She has no credit cards. She states that she has learned to live off of one salary and support her children by herself. She understands that she cannot spend money she does not have, and only buys necessities. She indicates that in the future, she will continue to decrease her spending habits and make her payments on a timely basis.

Presently, the Applicant and her husband are legally separated and their divorce is pending. She does not expect to receive any child support from her husband. She is working as much overtime as she is allowed. She and her three children have recently moved back in with her parents. Her new boyfriend is also living with them and taking care of her children to save her child care expenses. (Tr. p. 48).

A letter of recommendation from the Applicant's supervisor dated April 27, 2009, attests to her hardworking nature, skill, conscientiousness and trustworthiness. (Applicant's Exhibit A).

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 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;

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 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 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, 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.

Under the particular circumstances of this case, I find that the Applicant has done her best, given the excessive nature of the debts, and has made a good faith effort to resolve them. Her separation from her husband and her poor spending habits caused her financial demise. She is now the sole bread winner for her family and understands that she must be financially responsible. Although she tried to set up payment plans with her creditors and she started making payments toward them, this left her very little money to live on. After consulting with a financial counselor and her security officer at work, she hired an attorney and filed for Chapter 7 bankruptcy. Once her debts are discharged, she will have a fresh start. She should no longer have any problems paying her bills on time as she understands the importance of living within ones means. In the event that she has any future financial problems, her security clearance would immediately be in jeopardy. 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.

Under Guideline F, 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 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.

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. The Applicant has 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.
- 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.

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