



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-00302
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Department Counsel
For Applicant: *Pro Se*

June 8, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) dated February 17, 2007. (Government Exhibit 1). On March 11, 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.

Applicant answered the SOR in writing on March 24, 2009, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on April 13, 2009. A notice of hearing was initially issued on April 21, 2009, scheduling the hearing for May 12, 2009. The matter was continued based upon the fact that the Applicant failed to receive the notice of hearing. An amended notice of hearing was issued on May 12, 2009, scheduling the hearing for May 15, 2009. At the hearing, the Government offered seven exhibits, referred to as Government Exhibits 1 through 7, which were received without objection. Applicant offered nine exhibits, referred to Applicant's Exhibits A through I, that were admitted into evidence. She also testified on his own behalf. The transcript of the hearing (Tr.) was

received on May 27, 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, her testimony and the exhibits. The Applicant is 51 years old and has a Bachelors Degree in Business. She is employed by a defense contractor as a Purchasing Representative 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 has a twenty-four year work history with her employer. She explained that after high school, beginning in 1977, she worked for the police department where she met her husband. They were married in 1982. Her husband, who was fifteen years older, retired from the police department, did not work consistently, and acquired a serious drinking problem. In August 1984, the Applicant had a baby and wanted him to stop drinking, but he would not. The Applicant had run out of savings and her income from her job at a bank was insufficient to support the family, which also included paying child support for his two boys from a previous marriage and back taxes he owed. In an act of desperation, with only her suitcase and their child in hand, she left the state and moved in with her sister. She left behind all of her possessions. She got a job, and started sending money to her husband to help pay the bills. It was not long before she learned that he was not using the money to pay the bills. After two years of consuming alcohol to excess and running up credit card debt, her husband lost everything they owned including their home and their cars. He then moved out of state and in with the Applicant. By this time, the Applicant wanted a divorce, but was advised by her attorney to file for bankruptcy first. On February 9, 1987, the Applicant and her husband filed for Chapter 7 Bankruptcy and their debt was discharged in July 7, 1987. (Government Exhibit 4). Then they filed for divorce.

In 1990, the Applicant remarried and became accustomed to a dual income. She and her second husband were divorced in 1997.

In 2005, the Applicant purchased a home on two and a half acres near her job. It was a fixer but she was not patient enough to wait to improve it, and started using credit cards to pay for repairs. She then got a second on the house and spent that money. She broke her foot, which caused her to be out of work for seven months. While on

disability she was overpaid, and so when she returned to work, her employer was reimbursed from her paycheck. Her weekly check was only \$200.00 and she fell even farther behind on her bills. At the same time, unbeknownst to her, the interest rate on her home loan adjusted to 18 percent, a payment that she could not afford. She tried to sell the house, but it was eventually foreclosed upon. She moved out in November 2007. (Applicant's Exhibit F).

On October 24, 2008, the Applicant filed for Chapter 7 Bankruptcy again. Her liabilities totaled approximately \$51,200.00. (Government Exhibit 3). A letter from her attorney dated October 31, 2008, indicates that the Applicant recently completed a series of consumer/financial education courses designed to teach her how to properly handle her finances and prevent future financial issues. (Applicant's Exhibit A). The Applicant credibly testified that she now knows where she went wrong. She overspent, lived beyond her means and was a poor financial manager. She claims that she has now learned how to properly budget her money and pay her bills on time.

Letters of recommendation from her coworkers, friends and her pastor, indicate that the Applicant is dependable, hardworking, conscientious, honest, kind and compassionate. (Applicant's Exhibit B).

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 made a good faith effort to resolve her debts. In 1987, her financial problems were largely beyond her control. They were caused by her dead beat husband who had no consistent employment, consumed alcohol to excess, created excessive credit card debt and ultimately ended in divorce. In 2008, the situation was much different, and it appears that she has learned from her mistakes. It is noted that she missed seven months of work because of her broken foot and that her mortgage payment adjusted to an exorbitant amount, but for the most part, her financial problems were caused by a series of poor financial decisions that spiraled out of control. She understands that holding a DoD security clearance is a privilege and that she must always demonstrate financial responsibility. To resolve her indebtedness, she hired an attorney and was advised that her only option was bankruptcy. In 2008, she filed for Chapter 7 again. Once her debts are discharged, she will have a fresh start. She recently completed financial counseling classes and has learned how to properly budget her money and only buy necessities. 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 will 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.

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, *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 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).

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 above, when viewed under all of the guidelines 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.

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

