



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 09-01031  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

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

November 24, 2009

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on November 20, 2007. (Government Exhibit 1). On June 16, 2009, 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.

The Applicant responded to the SOR on July 7, 2009, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on August 4, 2009. A notice of hearing was issued on August 12, 2009, and the hearing was scheduled for September 22, 2009. At the hearing the Government presented nine exhibits, referred to as Government Exhibits 1 through 9. The Applicant presented two exhibits, referred to as Applicant's Exhibits A and B. She also testified on her own behalf. The record remained open until close of business on September 29, 2009, to allow the Applicant the opportunity to submit additional

documentation. The Applicant submitted twelve Post-Hearing exhibits, consisting of one hundred and one pages, referred to as Applicant's Post-Hearing Exhibits A through L, which was admitted without objection. The official transcript (Tr.) was received on October 5, 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 Applicant is 31 years old and is currently in her second year of college. She is employed by a defense contractor in dual positions as Administrative Support and Facility Security Officer 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 served in the United States Army on active duty from February 2001 through February 2004. She served in the Army Reserves from February 2004 through March 2006. By choice, in April 2006, she returned to active duty until May 2007. Unexpectantly, the Applicant was medically discharged due to a pinched nerve in her spine and a condition known as "PCIS" that caused her to uncontrollably gain weight. She also has no cartilage in her knees and neuroma in both of her feet. It was determined that she is 60% disabled and will received disability benefits starting in November 2009, in the amount of \$984.00 monthly. (Applicant's Post-Hearing Exhibit J). Her husband, who was also active duty Army, was injured in Iraq, and was found no longer fit for military duty. He was medically discharged in January 2008, and will receive disability. These unforeseen circumstances caused financial difficulties for the Applicant.

She admits that she became indebted to two creditors totaling approximately \$76,374.00. These creditors are set forth in the SOR under allegations 1(a) and 1(b) of the SOR. Applicant takes full responsibility for her debts. Credit reports of the Applicant dated April 8, 2009, September 6, 2008, March 9, 2009, June 2, 2009, July 29, 2009, and September 22, 2009, reflect each of these delinquent debts as owing. (See Government Exhibits 3, 4, 5, 6, 7, and 9).

The first debt in the amount of \$7,199.00 is for a credit card that became overdue when the Applicant was medically discharged from the Army. She destroyed the credit card and in August 2009, entered into an agreement to resolve the debt in the amount of \$100.00 monthly. Applicant has recently increased the monthly payment to \$150.00

monthly. The payment is automatically deducted from the Applicant's bank account. Applicant submitted receipts for payments made in January, June, July and August 2009. (Applicant's Post-Hearing Exhibit A). She plans to continue with the payment plan until the debt is paid in full.

The second debt in the amount of \$69,175.00 is for a mortgage on a house the Applicant purchased in November 2004. In March 2008, during which time both she and her husband were medically discharged from the Army, and out of work, the Applicant and her husband fell behind on their house payments. The Applicant had numerous discussions with the creditor concerning a loan modification, but was told by the bank that her income was insufficient. In November 2008, her house was foreclosed upon. To the Applicant's knowledge the house has not been resold. Applicant has tried to contact the creditor to find out the exact payoff. She indicates that she will contact them, set up a payment plan and start paying on the balance to resolve the debt. (Applicant's Post-Hearing Exhibit B).

Letters of recommendation from the Applicant's Human Resource Manager, coworkers, and past employer, attest to the Applicant's reliability, trustworthiness, hardworking nature, organization skills, strong moral character, conscientiousness and dedication to the job. She is recommended for a position of trust. (Applicant's Post-Hearing Exhibit E).

Applicant has completed various military training courses and has received awards and commendations for her service. (Applicant's Post-Hearing Exhibits G and H). Applicant has completed between 90% and 95% of her training for Facility Security Officer of the company, as evidenced by numerous certificates of completion in Department of Defense security awareness matters beginning in August 2008 and continuing through November 2009. (Applicant's Post-Hearing Exhibit I).

Applicant's personal financial statement indicates that she and her husband's monthly earnings, along with their vocational rehabilitation, and their disability, is sufficient to cover their monthly expenses and outstanding debts.

## **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;

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 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 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; 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 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 him or 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.

The evidence shows that circumstances largely beyond the Applicant’s control, namely her unexpected medical discharge from the Army in April 2007, and her husband’s injury in Iraq that led to his military medical discharge in January 2008,

largely caused their financial difficulties. Their joint income was significantly reduced, and they were left unemployed. Now, they have both found employment and are in a position to resolve their debts.

The Applicant has made a good faith effort to resolve her past due indebtedness. She has contacted each of the creditors and has either paid off the debt or is setting up a payment plan to do so. She does not plan on incurring any new debt. She understands the importance of paying her bills on time and living within her means. Under the circumstances, 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 and that she is fiscally responsible. 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 (Financial Considerations), Disqualifying Conditions 19.(a) *inability or unwillingness to satisfy debts; and 19.(c) a history of not meeting financial obligation* 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 above, when viewed under all of the guidelines as a whole, support a whole person assessment of good judgement, trustworthiness, reliability, candor, and 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, including the favorable letters of recommendation, military awards, military training certificates, medical documents verifying her and her husband's condition. They mitigate the negative effects of her financial indebtedness and the effects that it can have on her ability to 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 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.

## **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